July 1999

Review of British Gas Trading's Behaviour in the Domestic Gas Market

A Follow-up Document

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1. Introduction

Since May 1998, all the 20 million or so domestic[1] gas customers throughout Great Britain have had the statutory right to choose their gas supplier. To date over 4.5 million (22%) customers have exercised their right to switch from British Gas Trading (BGT)[2] to a new supplier, enabling them to benefit from lower prices and an improved choice of service.

However, BGT remains a dominant gas supplier and concerns have been expressed about its behaviour in the market. In October 1998, we published a review of the development of competition in the domestic gas market.[3] In that review we sought views on whether BGT had gone too far in defending its dominant position and if so, whether its behaviour was or had been a serious impediment to competitors' emergence and development.

More specifically we sought views on a number of initiatives undertaken by BGT, which individually or taken together might have had the intention or effect of restricting, distorting or preventing the development of competition in the domestic gas market. These initiatives were:

- BGT's 'Dual Fuel' offer;
- BGT's offers of complementary products or services;
- some forms of BGT's advertising; and
- the potential for BGT to take advantage of its dominant position during the process by which customers are transferred from BGT to other suppliers.[4]

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[1] Domestic customers are those customers in Great Britain consuming at or below 73,000 kWh a year (2,500 therms).
[2] BGT is a wholly owned subsidiary of Centrica plc. References to BGT in this document include those actions by Centrica on behalf of BGT.
[3] "Review of the Development of Domestic Competition", Ofgas, October 1998.
[4] As part of the October 1998 consultation, we also sought views on whether the present licence conditions unduly prevented customers in debt from switching supplier. This issue will be taken forward as part of our current review of the Social Action Plan.

25 responses were received to the October consultation: 1 from BGT; 18 from other suppliers; 2 from customer groups; and 4 from other interested parties. The Office of Gas and Electricity Markets (OFGEM) has developed its analysis taking these comments fully into account.

This document sets out our position on the issues described above. Chapter 2 gives relevant background on the regulatory framework. Chapters 3 to 6 set out respondents' views and OFGEM's position on BGT's initiatives described above. Chapter 7 provides a summary.

We will shortly issue a questionnaire for our 1999 review of the development of competition in the gas supply market. This will include both the domestic market and the industrial and commercial market. The 1999 review, taken together with the information in this document, will help inform our current review of BGT's supply price control.[5]

If you wish to comment on the contents of this document please respond by 5 August 1999 to:

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[5] See, "Review of British Gas Trading's Domestic Supply Price Regulation: A Consultation Document", Ofgas, June 1999.

2. Background

2.1 The Gas Act

The Director General of Gas Supply (DGGS) must exercise the functions assigned to him under the Gas Act 1986, as amended by the Gas Act 1995 (the 'Gas Act') in the manner that is best calculated to fulfil his duties described in Section 4 of that Act. These duties include a duty to protect the interest of consumers in respect of the prices charged and the other terms of supply, and a duty to secure effective competition in the supply of gas. (See Appendix 1 for a full list of the DGGS's Section 4 duties.)

2.2 Gas Suppliers' Licence

The Gas Act provides for the licensing of gas suppliers. The licence for domestic gas suppliers comprises a number of standard conditions that apply to all domestic gas suppliers including BGT. BGT's licence also contains special conditions that recognise its position as the dominant supplier.

(a) General Obligations

All suppliers are required to supply (and to continue to supply) gas in the areas covered by their licences to every domestic customer who requests such a supply at premises connected to the system. In addition, each supplier must make available its terms of supply on request.

Suppliers are required to accept payment by a range of methods, including cash, cheque, or postal order. Suppliers must offer a prepayment meter as an alternative to a cash deposit, and as an option prior to disconnection.

(b) Social Obligations

Domestic gas suppliers are required to arrange to meet a number of social obligations. These obligations include:

- providing energy efficiency advice on request;

- providing special controls, adapters and advice on gas use, appliances and fittings to pensioners and to the disabled and chronically sick on request, facilities for blind and deaf people, and to keep a register of such customers; and

- providing credit terms for the supply of gas to those customers who are in debt through misfortune or inability to meet bills for gas supplied on credit. This includes offering the facility to discharge their debt by instalments or a prepayment meter and general advice on how future bills can be reduced through the more efficient use of gas.

(c) Marketing

An additional standard condition was added to all domestic suppliers' licences in January 1998 to establish basic principles for the conduct of direct marketing. This licence condition:[6]

- places requirements on suppliers in respect of the selection and training of sales staff;

- requires that a customer signing a contract following a sales visit or telephone call should be contacted within 14 days by someone else from the company to ensure that the customer is content with the sales approach and is aware of having signed a contract;

- requires that the company should maintain contact with the customer and inform them of progress where a sale takes place two months or more before a customer is due to change supplier;

- prohibits suppliers using agents who seek payment in advance for arranging a supply of gas; and

- requires suppliers to operate schemes for paying compensation to customers who are victims of misleading sales.

2.3 Non-Discrimination and Predation

Under Standard Condition 13 of the Gas Suppliers' Licence, a dominant gas supplier is prohibited from showing undue preference or exercising undue discrimination against

[6] Standard Condition 14a.

any person or class of persons. Standard Condition 13 also prohibits predatory and unduly onerous pricing.

Notwithstanding the prohibition on undue preference and undue discrimination, a dominant supplier is able to set terms in a way that is reasonably necessary to meet *established* competition. The prohibition on predatory and unduly onerous pricing obtains whether or not competition is established.

In response to a request from BGT, OFGEM (then Ofgas) set out guidance on how to interpret these requirements. This was published as part of OFGEM's final proposals for BGT's 1997 price control.[7] (This guidance is reproduced as Appendix 2.) The guidance on how OFGEM would judge whether BGT was pricing in a predatory way is particularly relevant.

OFGEM said that predatory pricing is generally suspected if prices do not cover the costs that can be directly attributed to the group of customers to which they relate. OFGEM set a preliminary threshold level for consideration of predatory behaviour. Prices set such that they do not cover all BGT's attributable costs, including gas, would prima facie be considered to be predatory and warrant regulatory investigation. OFGEM considered that an appropriate level for the attributable gas cost would be the longer-term spot price including an allowance for swing. OFGEM recognised that predation might also occur where prices were set at the same level as, or above, attributable costs. Whether prices were predatory or not would be best judged against the result that they could be expected to achieve, which would depend on the circumstances at the time.

Standard Condition 13 does not address all aspects of anti-competitive behaviour. It complements but does not substitute for the normal operation of UK competition law.

2.4. 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, OFGEM works in conjunction with the Office of Fair Trading (OFT) under the

[7] "1997 Price Control Review, Supply at or below 2,500 therms a year – British Gas Trading: The Director General's Final Proposals", Ofgas, November 1996.

terms of the OFGEM/OFT Concordat.[8] In exercising his functions under the competition legislation, the DGGS must act in accordance with his Section 4 duties under the Gas Act.

The Competition Act 1998 received Royal Assent on 9 November 1998 (and comes into force on 1 March 2000). The new Act replaces and/or amends existing competition legislation, including the Restrictive Trade Practices Act 1976; the Resale Prices Act 1976; the Fair Trading Act 1973; and the Competition Act 1980. It will apply European Union competition law principles to domestic gas supply competition in the United Kingdom.

The Competition Act 1998 introduces two prohibitions called the Chapter I and Chapter II prohibitions. Chapter I prohibits agreements between undertakings that have the object or effect of preventing, restricting or distorting competition. Chapter II prohibits conduct by one or more undertakings, which amounts to the abuse of a dominant position. Companies can be fined up to 10 per cent of their UK turnover for breaches of these prohibitions.

2.5 OFGEM's Approach to Evaluating Potentially Anti-Competitive Behaviour by BGT

It is understandable that BGT will seek to circumscribe its competitors' success. A large range of initiatives is open to BGT in defending its dominant position. The question is whether these initiatives, on their own or taken together, breach the provisions of BGT's licence and/or competition legislation.

In deciding whether and how to use our powers under the licence provisions or general competition legislation OFGEM has to distinguish initiatives that might be expected in the normal cut and thrust of business from those that amount to anti-competitive behaviour. In practice, there can be a fine line between the two.

Judgements need to be made by reference to the actual or predicted effect of an initiative on the development of competition. Moreover, they can only be made in the light of the specific circumstances surrounding one or more of BGT's initiatives.

[8] The terms of the OFGEM/OFT Concordat are available from the OFGEM library.

In reaching an assessment of BGT's behaviour, OFGEM will have regard for the effects of each individual initiative, the effect of two or more initiatives combined, and the cumulative effect of a number of initiatives over time.

3. BGT's Dual Fuel Offer

3.1 Issue

(a) BGT's 'Dual Fuel' Offer

Since the first quarter of 1998, BGT offered 'dual fuel' supplies to domestic gas and electricity customers (excluding electricity customers using prepayment meters). BGT's offer has two elements. First, customers taking both gas and electricity from BGT are offered a reduction of about £14 a year (£3.50 per quarter) off their combined gas and electricity bills. Customers benefiting from the £14 discount continue to be billed separately for gas and electricity. The reduction appears to each customer as a reduction in his or her electricity standing charge. Second, BGT offers its domestic customers who purchase both gas and electricity, a guarantee that its 'electricity' prices will be cheaper than those of local suppliers until 2001. BGT continues to offer separate gas and electricity supply.

By the end of June 1999, BGT had signed up 1.5 million electricity customers, around 90% of whom had taken up its 'dual fuel' offer. OFGEM's (then OFFER's) recent review of the development of domestic electricity competition found that BGT accounted for about 60% of the total number of customers switching electricity supplier.[9]

(b) Initial Concerns

In the October 1998 review of domestic gas competition, OFGEM (then Ofgas) said that we wished to ensure that BGT, in making its 'dual fuel' offer, was not acting anti-competitively. A particular competitive concern was that where lower prices were applied in the guise of savings for one fuel (as BGT has applied its 'dual fuel' discount to electricity standing charges, rather than to both gas and electricity), it might also be a covert way to cut prices on gas, raising questions of predation.

3.2 Respondents' Views

Respondents in general expressed concern that BGT's 'dual fuel' offer could be predatory and asked OFGEM to check whether BGT's 'dual fuel' offer covered its costs.

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[9] "A Review of the Development of Competition in the Designated Electricity Market", OFGEM, June 1999.

Three respondents said that they had undertaken their own analysis of BGT's 'dual fuel' offer, which suggested that it did not cover its costs. One shared its analysis with OFGEM. This analysis took into account regional variations in gas transportation costs, reflecting Transco's geographically differentiated transportation charges.

Several competitors stated that BGT should not be allowed to make purchasing cheap electricity dependent on buying expensive gas. It was also argued that there was no reason why BGT's guarantee of low electricity prices for three years should be linked to the continued supply of gas.

3.3 BGT's Views

BGT believed 'dual fuel' allowed it to make cost savings because of synergies arising from the supply of a joint product. BGT's intention was to pass this saving on to the customer by way of a discount on the electricity standing charge. BGT said that any action taken against it should recognise the broader impact for the electricity market, and the rapidly developing "energy" market.

3.4 Analysis

In the light of respondents' concerns, OFGEM has undertaken a preliminary analysis of whether BGT's 'dual fuel' offer is compliant with Standard Condition 13 of its licence and general competition law. In particular, OFGEM has examined whether BGT's 'dual fuel' offer is predatory.

As noted in chapter 2, predatory pricing is generally suspected if prices do not cover the costs that can be directly attributed to the group of customers to which they relate. Therefore, OFGEM's preliminary analysis of BGT's 'dual fuel' offer has examined whether it recovers attributable costs for gas and electricity supply. This preliminary analysis is set out section (a) below.

OFGEM has also examined the comparative competitive position of BGT's 'dual fuel' offer with rival packages (set out in section (b) below). This analysis recognises that whether or not prices are predatory should be judged against the result that they could be expected to achieve even if prices are set at the same level as, or above, attributable costs.

(a) Comparison of BGT's 'Dual Fuel' Bills with Attributable Costs

(i) Data Sources and Limitations

For the purpose of our preliminary analysis, we have drawn cost data from a variety of sources:

- attributable gas supply costs, e.g. billing and customer contact costs, are taken from OFGEM's (then Ofgas) review of BGT's tariff caps;[10]

- other attributable gas costs were provided by BGT. In particular, we have used BGT's estimate for its gas costs for 1998/99 of 0.7 pence per kWh (20.36 pence per therm);

- attributable electricity distribution and transmission charges are taken from published Public Electricity Supplier (PES) charging statements;

- other attributable electricity costs were provided by BGT; and

- an element of profit of 1.5% on turnover has been included in the assessment of attributable costs.

All costs relate to the tariff year 1998/99 (BGT's costs are set out in more detail in Appendix 3)

We have taken information on bills from BGT's published national tariffs for gas, and its regional electricity tariffs. The combined bill is reduced to reflect the 'dual fuel' discount.

In all of the following analysis, we have calculated costs and bills using average consumption levels. For electricity standard credit and direct debit customers we have used the industry average annual consumption of 3,300 kWh a year (113 therms). For gas, we have used BGT's annual average consumption levels for 1998/99: i.e. 17,233 kWh a year (588 therms) for standard credit customers and 22,449 kWh a year (766 therms) for direct debit customers.

[10] "Review of British Gas Trading's Domestic Gas Supply Tariffs", Ofgas, July 1998.

OFGEM recognises that its preliminary price/cost comparisons carried out using the above data and assumptions may be refined in a number of ways including the following:

- inclusion of start-up costs. Our initial assessment, which treats 'dual fuel' offers as an ongoing business, does not capture all the attributable costs that are relevant to the launch of a new offer, in particular, the costs associated with the product development and initial marketing;

- improved estimates of electricity costs. BGT's electricity costs are based on approximations and, in particular, BGT's own view of its electricity purchase costs. We will wish to undertake a more detailed examination of BGT's electricity costs. OFGEM's Reform of Electricity Trading Arrangements and the Separation of PES distribution and supply businesses may influence this analysis;

- improved estimates of gas purchase costs. We will want to refine our estimate of an appropriate level of gas purchase costs; and

- widening the analysis to incorporate 'dual fuel' offers at a range of consumption levels.

In carrying out a subsequent evaluation we will want to refine our analysis to take these points into account.

(ii) Preliminary Assessment

Table 1 shows BGT's standard credit 'dual fuel' bills compared to estimates of attributable costs for combined gas and electricity supply in all PES areas. It shows that BGT's bills fail to cover attributable costs in Scotland. However, these differences are relatively small.

Table 1 – BGT's Standard Credit 'dual fuel' Bills and Attributable Costs, 1998/99

PES Area	Bill £	Cost £	Difference £	Difference %
Eastern	504.94	487.98	16.96	3.5
EME	511.20	501.52	9.68	1.9
London	513.82	504.25	9.57	1.9
Manweb	526.13	518.92	7.21	1.4
Midlands	510.50	499.29	11.21	2.2
Northern	525.30	510.46	14.84	2.9
Norweb	513.76	508.71	5.05	1.0
Seeboard	510.55	495.88	14.67	3.0
Southern	512.14	502.20	9.94	2.0
Swalec	544.67	535.15	9.52	1.8
South Western	536.11	519.19	16.92	3.3
Yorkshire	506.97	503.18	3.79	0.8
Scottish Power	**516.10**	**524.13**	**-8.03**	**-1.5**
Hydro	**508.70**	**508.78**	**-0.08**	**0.0**

The equivalent comparison for direct debit customers is shown in table 2. It shows that BGT's bills failed to cover attributable costs in Scotland, and in Yorkshire Electricity's PES area. Again, these differences are relatively small.

Table 2 – BGT's Direct Debit 'dual fuel' Bills and Attributable costs, 1998/99

PES Area	Bill £	Cost £	Difference £	Difference %
Eastern	519.81	507.22	12.59	2.5
EME	526.12	520.31	5.81	1.1
London	528.70	523.49	5.21	1.0
Manweb	541.01	537.72	3.29	0.6
Midlands	525.38	518.53	6.85	1.3
Northern	540.21	529.70	10.51	2.0
Norweb	528.64	527.95	0.69	0.1
Seeboard	525.50	515.12	10.38	2.0
Southern	527.06	520.99	6.09	1.2
Swalec	559.55	554.39	5.16	0.9
South Western	551.03	538.43	12.60	2.3
Yorkshire	**521.88**	**522.43**	**-0.55**	**-0.1**
Scottish Power	**530.98**	**543.37**	**-12.39**	**-2.3**
Hydro	**523.62**	**528.03**	**-4.41**	**-0.8**

The above analysis recognises regional variations in electricity distribution and transmission charges. It does not take into account regional variations in gas transportation charges because BGT's price control[11] effectively requires it to smear its transportation charges equally across all domestic customers.

However, in light of a respondent's concern, we have considered the effect of Transco's gas transportation charges, which are levied on a regional basis. We have compared costs to prices in each PES area using both the highest gas transportation charge, and the lowest gas transportation charge in that particular PES area (the "Hi" and "Lo" scenarios respectively).[12] Price/cost comparisons for standard credit and direct debit customers are set out in tables 3 and 4 respectively.

[11] BGT's price control is set out in its Special Condition 3 of its Gas Suppliers' Licence.
[12] PES areas do not coincide with Transco's charging zones, known as "exit zones".

Table 3 shows that BGT's 'dual fuel' prices cover attributable costs for standard customers in all PES areas.

Table 3– BGT's Standard Credit 'Dual Fuel' Bills and Attributable Costs, 1998/99

PES Area	Gas Transportation Cost	Bill £	Cost £	Difference £	Difference %
Eastern	Hi	504.94	489.23	15.71	3.2
	Lo		481.79	23.15	4.6
EME	Hi	511.20	495.43	15.77	3.2
	Lo		493.54	17.66	3.6
London	Hi	513.82	506.51	7.31	1.4
	Lo		505.50	8.32	1.6
Manweb	Hi	526.13	524.87	1.26	0.2
	Lo		514.26	11.87	2.3
Midlands	Hi	510.50	509.20	1.30	0.3
	Lo		496.35	14.15	2.9
Northern	Hi	525.30	502.55	22.75	4.3
	Lo		500.38	24.92	4.7
Norweb	Hi	513.76	503.72	10.04	2.0
	Lo		499.23	14.53	2.9
Seeboard	Hi	510.55	498.14	12.41	2.5
	Lo		498.14	12.41	2.5
Southern	Hi	512.14	509.60	2.54	0.5
	Lo		502.61	9.53	1.9
Swalec	Hi	544.67	541.54	3.13	0.6
	Lo		534.81	9.86	1.8
South Western	Hi	536.11	532.05	4.06	0.8
	Lo		527.03	9.08	1.7
Yorkshire	Hi	506.97	495.65	11.32	2.3
	Lo		493.11	13.86	2.8
Scottish Power	Hi	516.10	514.04	2.06	0.4
	Lo		514.00	2.10	0.4
Hydro	Hi	508.70	498.66	10.04	2.0
	Lo		498.66	10.04	2.0

Table 4 shows that BGT's direct debit 'dual fuel' bills fail to cover attributable costs in parts of six PES areas and anywhere in Scottish Power's PES area.

Table 4 – BGT's Direct Debit Dual Fuel Prices and Attributable Costs, 1998/99 prices

PES Area	Gas Transportation Cost	Bill £	Cost £	Difference £	Difference %
Eastern	Hi	519.81	510.14	9.67	1.9
	Lo		500.45	19.36	3.9
EME	Hi	526.12	514.26	11.86	2.3
	Lo		511.79	14.33	2.8
London	Hi	528.70	527.72	0.98	0.2
	Lo		526.41	2.29	0.4
Manweb	**Hi**	**541.01**	**547.35**	**-6.34**	**-1.2**
	Lo		533.53	7.48	1.4
Midlands	**Hi**	**525.38**	**532.72**	**-7.34**	**-1.4**
	Lo		515.98	9.40	1.8
Northern	Hi	540.21	520.68	19.53	3.6
	Lo		517.80	22.41	4.1
Norweb	Hi	528.64	522.76	5.88	1.1
	Lo		516.91	11.73	2.3
Seeboard	Hi	525.50	519.35	6.15	1.2
	Lo		519.35	6.15	1.2
Southern	**Hi**	**527.06**	**532.51**	**-5.45**	**-1.0**
	Lo		523.39	3.67	0.7
Swalec	**Hi**	**559.55**	**564.04**	**-4.49**	**-0.8**
	Lo		555.27	4.28	0.8
South Western	**Hi**	**551.03**	**556.48**	**-5.45**	**-1.0**
	Lo		549.95	1.08	0.2
Yorkshire	Hi	521.88	513.90	7.98	1.6
	Lo		510.39	11.29	2.2
Scottish Power	**Hi**	**530.98**	**531.53**	**-0.55**	**-0.1**
	Lo		**531.47**	**-0.49**	**-0.1**
Hydro	Hi	523.62	516.13	7.49	1.5
	Lo		516.13	7.49	1.5

(b) Comparative Competitive Position of BGT's Dual Fuel Offer

(i) Data Sources and Limitations

We have treated all available combinations of gas and electricity offers, in a given area, as rival packages to BGT's 'dual fuel' offer. Consistent with our previous decision on ValuePlus,[13] we have regarded customers paying for gas by direct-debit as a separate class of customers from those paying for gas by standard credit. We have not, at this stage, attempted to determine whether competition in any particular market or sub-market may be described as "established".

For the purposes of our comparisons, we have considered:

- BGT's 'dual fuel' offer;
- host PES 'dual fuel' offers;
- packages of PES electricity offers plus gas offers from all national gas suppliers; and
- packages of second-tier electricity offers plus gas offers from all national gas suppliers.

We have not compared BGT's 'dual fuel' offer to packages comprising local gas suppliers with electricity only offers. We have also not included non-tariff inducements, such as air-miles and Argos Premier Points. The comparisons use the same average consumption levels as the price/cost comparisons in section (a) above.

(ii) Preliminary Assessment

Chart 1 shows that BGT's 'dual fuel' offer for standard credit customers in each PES area compared to the highest and lowest alternative combined packages. It shows that customers in all PES areas can get a package of gas and electricity at a significant discount to BGT's 'dual fuel' offer.

[13] "ValuePlus: British Gas Trading's pricing to Direct Debit Customers in the South West of England: A Decision Document", Ofgas, May 1997.

Chart 1 – Competitive Position of BGT's Standard Credit Dual Fuel Offer, June 1999

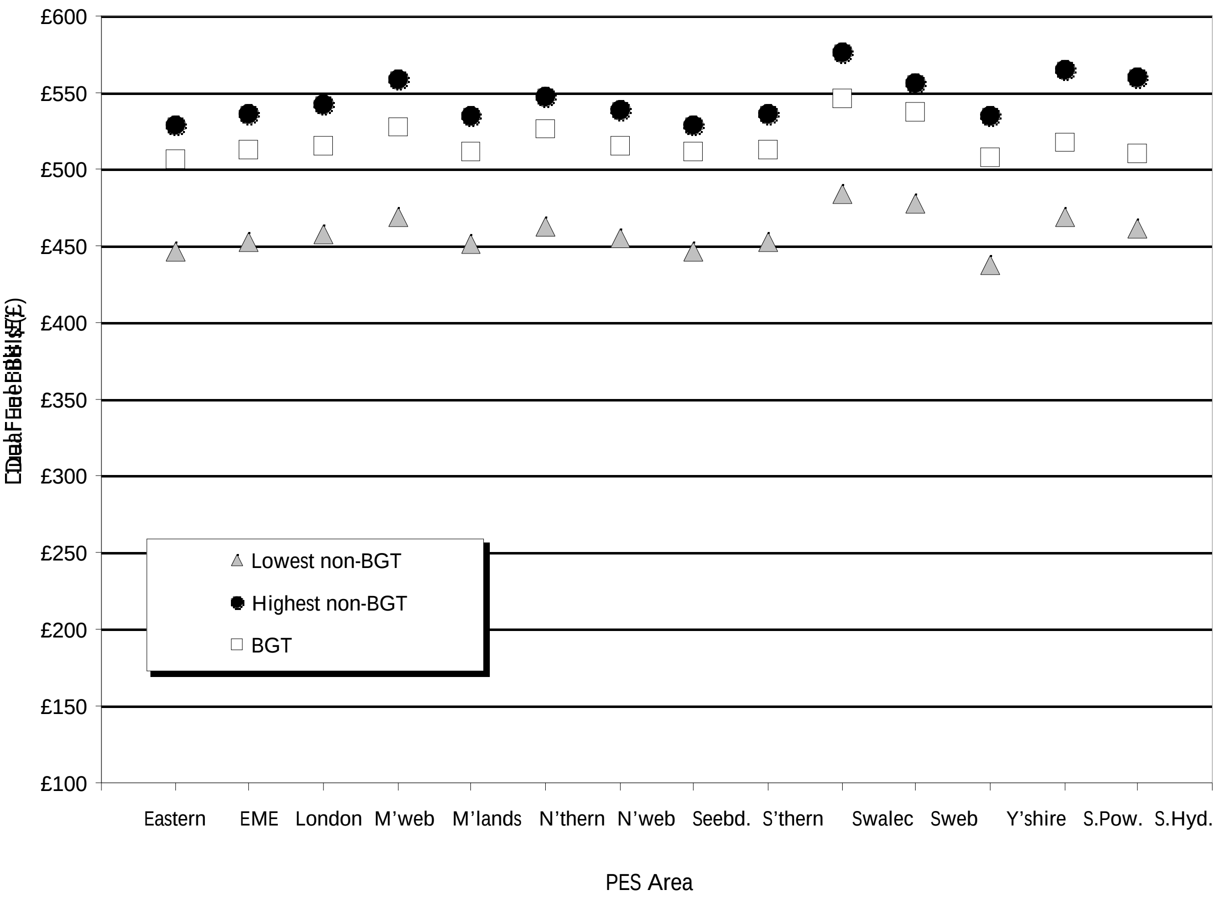
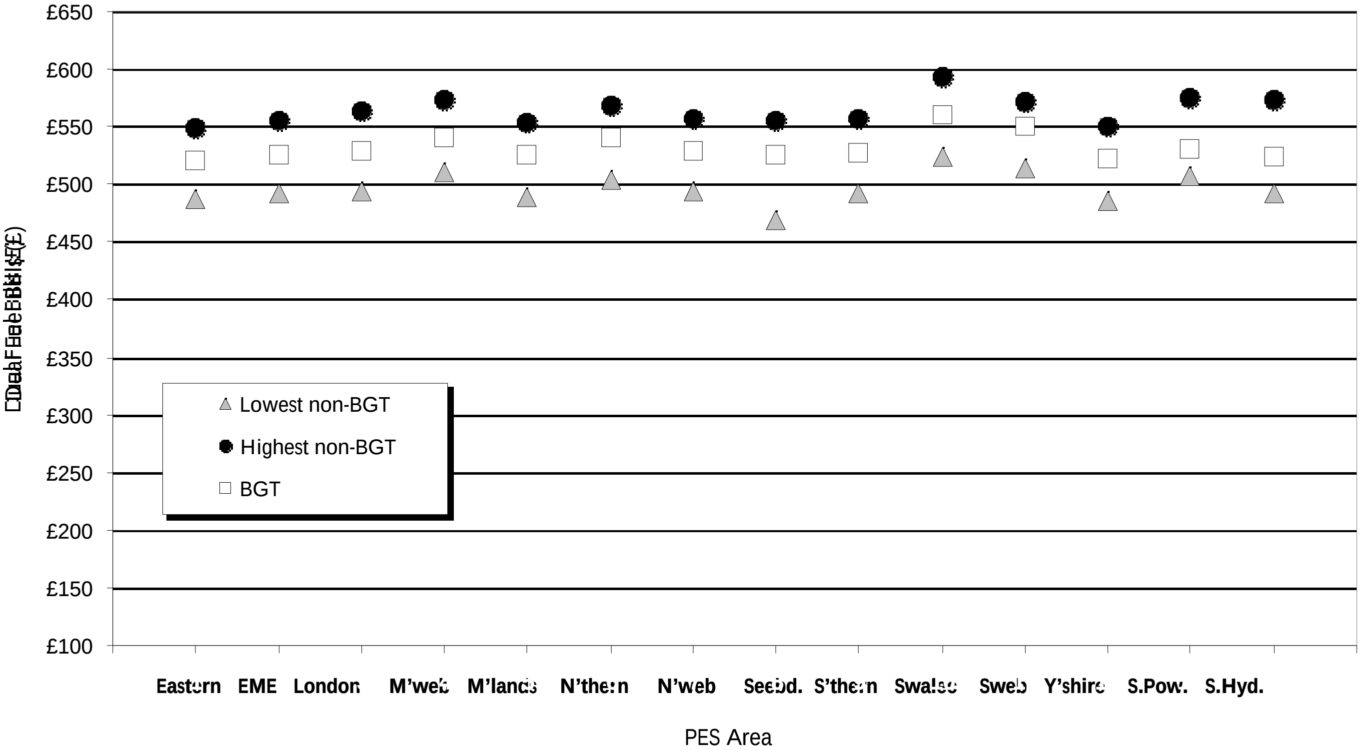


Chart 2 below shows that BGT's 'dual fuel' offer for direct debit customers in each PES area compared to the highest and lowest package of gas and electricity. Again, it shows that customers in all PES areas can get a package of gas and electricity at a significant discount to BGT's 'dual fuel' offer.

Chart 2 – Competitive Position of BGT's Direct Debit Dual Fuel Offer, June 1999



3.5 OFGEM's Position

The results of our preliminary analysis show that, in general, BGT's 'dual fuel' offer covers its attributable costs. There are exceptions. In particular, in respect of direct debit offers, where BGT's 'dual fuel' offers fail to cover attributable costs in parts of six PESs areas. However, the differences between prices and attributable costs in these cases are relatively small, i.e. less than, or equal to, 2.3%.

The comparison of BGT's 'dual fuel' offer with packages of rival offers for gas and electricity shows that customers can receive gas and electricity at a significant discount to BGT's 'dual fuel' offers. Based on this preliminary analysis we do not consider BGT's 'dual fuel' offer to be predatory. This gap is unlikely, in practice, to be affected by subsequent refinements in the estimates of BGT's 'dual fuel' costs. Therefore, we do not propose to take immediate regulatory action.

We are nonetheless aware that the calculations used for attributable costs make a number of simplifying assumptions that bear on the outcome of the analysis. Further work will be taken forward as part of our review of BGT's price control, in particular with respect to estimates of BGT's full supply costs, electricity, and gas purchase costs.

OFGEM does not consider BGT's price promise (i.e. that the electricity component of its 'dual fuel' offer will be cheaper than that of the local PES until 2001) to be anti-competitive in itself. It is open to all competitors to make comparable offers; in entering the market they choose a competitive position relative to the local PESs. It is relevant to note in BGT's case that, as discussed above, there is a choice of alternative gas and electricity offers that could offer significant discounts to BGT's 'dual fuel' offer.[14]

[14] In this context, OFGEM notes that the Advertising Standards Authority upheld a complaint in October 1998 about BGT's electricity price guarantee. This was because some PESs did offer some of their customers cheaper electricity than BGT (see chapter 5 and Appendix 5).

4. BGT's Offers of Complementary Products and Services

4.1 Issue

(a) BGT's Range of Complementary Products

BGT promotes or markets a number of products and services that may have an indirect bearing on sales of gas. The chief examples have been the Goldfish credit card and insurance services. In addition, BGT has undertaken ventures with the supermarket chain, Sainsbury's and, more recently, with the mobile phone company Vodafone. These are described below.[15]

(i) Goldfish Credit Card

The Goldfish credit card was launched on 11 September 1996 by Goldbrand Development Ltd (GDL), a joint venture established by BGT and Household International (UK). Goldfish credit cardholders collect "Goldfish points". Cardholders receive 1 point for every £1 spent using the credit card. To BGT's customers, each point is worth 1 pence towards their BGT gas bills. Cardholders can also redeem points against a variety of other products and redemption partners, e.g. Boots and Asda. GDL has so far issued over 900,000 cards.

(ii) British Gas Home Insurance

On 1 December 1997, Centrica set up a joint venture with Privilege Insurance called British Gas Home Insurance (BGHI). BGHI introduced a home and contents insurance package offering a third of the first year's premium back in rebates. BGT has said the average rebate is worth £71. Rebates are offered shortly after the insurance is taken up, and are offered in the form of credits towards BGT's gas bills, credits towards BGT's electricity bills, savings on British Gas 3-star service cover, savings on appliances sold at British Gas Energy Centres, or as Goldfish points. In addition, BGHI has promised customers £20 of the second year's premium back in rebates (in the same form as rebates on the first year offer) if they renew their insurance. About 45,000 customers have taken up BGHI's insurance offer.

[15] On 5 July 1999, Centrica announced its intention to acquire the Automobile Association. The implications of this proposal, if implemented, have not been considered in this document. However, in so far as this proposal may have implications for competition in domestic gas and electricity supply, the issue will be considered as part of our 1999 Competitive Market Review.

(iii) BGT's and Sainsbury's Initiative

On 5 October 1998, BGT began a campaign to market its electricity supply offer in conjunction with Sainsbury's. BGT is offering new electricity customers 1000 Sainsbury's 'Reward points'; equivalent to a credit of £10 towards purchases at Sainsbury's stores. BGT has stated that the initiative applies solely to electricity customers, and is available whether or not these customers also take gas from BGT.

(iv) BGT's and Vodafone's Mobile Phone Offer

In March 1999, BGT announced a joint venture with Vodafone to offer a pre-pay mobile phone for £69.99. It is available to customers regardless of whether they take gas or electricity from BGT. Customers receive a phone and £35 of talk time under the 'Pay as you Talk' service. BGT give customers a voucher worth £25 of talk time. Vodafone gives the remaining £10.

(b) Initial Concerns

Concerns were expressed that complementary products might be anti-competitive or constitute undue discrimination. In relation to BGHI's insurance offer, OFGEM received a complaint that BGT's call centre staff led customers to believe that rebates on insurance offers were only paid in the form of credits towards BGT gas bills. However, BGT has since provided assurances that call centre staff would be trained to ensure that customers are informed of all the ways in which rebates may be achieved.

4.2 Respondents' Views

In general, respondents expressed concern that BGT's marketing of complementary products may be anti-competitive and could help BGT maintain its dominant position in the domestic gas market. Respondents were particularly concerned about the implications for competition in the domestic gas market if BGT could introduce complementary products that in some way tied customers to BGT. One respondent said that the bundling of services provided BGT with an opportunity to confuse customers. Several respondents said the strength of the inherited national brand of BGT meant that other suppliers cannot attract marketing alliance partners in the same way as BGT.

To overcome these problems, several respondents asked OFGEM to consider whether BGT's complementary products "tied" customers to BGT in an anti-competitive way.

Several respondents also suggested that BGT should make clear that customers do not have to buy gas from BGT in order to buy the related product at the discounted price.

4.3 BGT's View

BGT said that the marketing of complementary products and services was a legitimate response to competition and provided additional benefits for customers, while being structured specifically to avoid any anti-competitive lock-in.

4.4 OFGEM's Position

We have examined each of BGT's initiatives to assess whether they may be regarded as anti-competitive or unduly discriminatory, unduly preferential or predatory.

In judging whether an initiative is anti-competitive, OFGEM has particularly looked for evidence that complementary products act to tie gas customers to BGT. A "tie-in", in this context, could occur where complementary products significantly affect gas customers' incentives to switch away from BGT. For example, discounts that are made available from purchasing complementary products for redemption against BGT's gas bills may affect customers' evaluation of BGT's gas tariffs against other suppliers' overall offers. Broadly speaking, this effect is lessened the more these discounts and offers represent cash that customers can put to alternative uses. One approach to overcome this effect is to ensure that these discounts and offers can be easily redeemed against a wide range of goods and services.

OFGEM also wants to ensure that BGT's complementary products and services do not result in undue discrimination or preference against a class or classes of gas customer. At one level, this can be achieved by BGT making the complementary product available to all gas customers. More specifically, offers should not be structured in such a way that could lead to effects that amount to undue discrimination, undue preference, or predatory prices in respect of one or more groups of gas customers.

(a) Goldfish Credit Card

After consultation, OFGEM published a decision document in October 1997[16] that concluded that the Goldfish scheme was not anti-competitive provided that:

[16] "Goldfish: British Gas Trading's Credit Card Joint Venture: A Decision Document", Ofgas, October 1997.

- Goldfish points could be redeemed against a wide range of other goods and services;

- that customers could redeem their points against their final BGT account if they changed to an alternative gas supplier;

- that BGT refunded any surplus credit in cash to the customer; and

- that BGT made these conditions known to its gas customers.

To ensure that Goldfish did not show undue discrimination and undue preference, Ofgas asked BGT to make the facility for bill payment using Goldfish points available to PrePayment customers and to small business gas users in the market at or below 73,000 kWh a year (2,500 therms). In the case of small business users, BGT agreed. In the case of PrePayment customers, BGT said that its systems could not process the credit towards the gas bill in the same way as for customers on credit meters. BGT has also said that the demand from PrePayment customers for this facility has been very low. OFGEM has asked BGT to process such requests manually.

OFGEM has received no evidence to suggest that BGT is not operating the Goldfish credit card in accordance with these conclusions. Therefore, OFGEM does not propose to take any further action at this stage, but will continue to monitor how the operation of the Goldfish credit card affects the development of competition in gas.

(b) British Gas Home Insurance

BGT's insurance initiative raises similar issues as the Goldfish credit card. It should therefore result in similar requirements on BGT, namely that:

- the insurance discount should be redeemable against a wide range of other goods and services;

- information should be added to BGT's bills to make it clear that customers can redeem their insurance discount against their final bills should they wish to switch supplier and that BGT would refund any surplus credit in cash to the customer; and

- the facility for the insurance discount to be credited towards bill payment should be made available to all domestic customers, i.e. customers consuming 73,000 kWh a year (2,500 therms) or less, including small businesses and Prepayment customers.

Prior to the publication of OFGEM's October 1998 domestic market review, BGT confirmed that it would deal with these issues in relation to the insurance joint venture in the same way as for the Goldfish credit card.

However, in light of respondents concerns, OFGEM has requested an assurance from BGT that promotional material relating to the insurance offer makes it clear that the discount is not related to the continued supply of gas by BGT.

(c) BGT and Sainsbury's Initiative

BGT's and Sainsbury's initiative is available to electricity customers only, regardless of whether they are also a BGT gas customer. BGT has said that customers receive all the Reward points up-front. BGT has confirmed that customers would not lose their Reward points if they subsequently switched electricity suppliers. On this basis, there do not appear to be any concerns about tie-in.

In our October 1998 document, we said that we were inclined to consider this initiative as legitimate competition in the electricity market. However, further consideration of this offer, in the light of the success of BGT's 'dual fuel' initiative, and respondents' views, has led us to consider BGT's offer in the context of combined gas and electricity supply.

Although the offer is made to electricity customers – whether or not they also take gas from BGT – in practice, around 90% of these customers are BGT gas customers. Seen in this context, this offer would appear similar to the discount offered to 'dual fuel' customers, and should be treated accordingly. On this basis, OFGEM will examine the "effective" offer to gas customers as part of its review of BGT's price control.

(d) BGT's Mobile Phone Initiative with Vodafone

Vodafone and BGT's mobile phone offer is not linked to the supply of gas. BGT has told OFGEM that if a customer switches gas supplier after taking up the mobile phone offer, he or she will not lose any of the introductory benefits or face different terms and conditions from customers on the mobile phone offer continuing to take gas from BGT. Customers receive the introductory talktime offer up-front. On this basis, OFGEM does not have any present intention to take any action.

5. Advertising

5.1 Issue

(a) BGT's Advertising

In our October 1998 document, we reported concerns about the manner in which BGT had been conducting its marketing and sales activities (collectively referred to as its advertising). We identified a number of steps taken by BGT that had in the past given rise to particular concern. These included:

- misleading advertising about BGT's prices;
- denigration of competitors;
- giving the impression that its information line is an independent customer advisory service rather than part of its marketing campaign;
- creating an impression that BGT is associated with safety and its competitors are not; and

misleading claims over number of customers returning to BGT.

(b) Initial Concerns

BGT has ceased many of these particular activities, often in response to concerns raised by OFGEM at the time. However, in our October 1998 document, we expressed concern that the cumulative effect of some of BGT's advertising may have an adverse impact on the development of competition. Views were sought on whether concerns remained and, if so, what action should be taken to address those concerns.

5.2 Respondents' Views

More than any other issue raised in the October 1998 document, respondents expressed serious concern about BGT's advertising.

Most respondents considered that BGT was abusing its dominant position by designing advertising to mislead customers and cloud their judgement when it comes to comparing prices and services offered by competing suppliers. Respondents were concerned that BGT was using its advertising and its established reputation to damage the reputations of new suppliers and competition. Several respondents asked OFGEM to consider the cumulative impact of all of BGT's advertising.

Several respondents expressed concern about the time it takes for the Advertising Standards Authority (ASA) to react to complaints about BGT's advertisements. These respondents argued that before remedial action could be taken BGT's advertising might have already altered customers' perceptions and thereby damaged the prospects for competition. One respondent noted that BGT had usually ceased an advertising campaign before the ASA reached a decision.

Several respondents said that if BGT's advertising is found to be anti-competitive, OFGEM should use its powers to fine BGT under the new Competition Act 1998. Other respondents argued that BGT should have to seek prior approval from OFGEM for all its advertising campaigns. One respondent said that BGT's advertising should be appropriately reflected in the prices it charges customers to prevent BGT from unfairly cross subsidising advertising in competitive markets from its customer base in less competitive markets.

5.3 BGT's Views

BGT said in its response that advertising was a normal commercial practice for companies operating in competitive markets.

BGT accepted that the British Gas brand has a high national presence. However, BGT argued that competition takes place at a local level where the PESs that supply gas have a level of brand awareness equal to BGT. BGT also argued that any barriers to establishing a national brand could be overcome by imaginative marketing and advertising. BGT notes that marketing techniques by new entrants, such as doorstep marketing, have been highly effective ways of making customers aware of new entrants' brands.

BGT said that the ASA is the appropriate regulatory body to deal with concerns relating to its advertising.[17] BGT said that its position as the incumbent starting with 100% of the market and an established reputation did not imply that there was a need to make the ASA's guidelines more restrictive for BGT.

5.4 The Role of the ASA and the Role of OFGEM

Before considering the nature of BGT's conduct of its marketing and sales activities, it is important to clarify the role of the ASA and the role of OFGEM.

The ASA is an independent body that oversees the self-regulatory system of advertising control. This system is funded by the advertising industry. It promotes and enforces standards in all non-broadcast advertisements[18] in the UK, with the aim of ensuring that the British Codes of Advertising and Sales Promotion are followed. The codes require that advertisements and sales promotions should be:

- legal, decent, honest and truthful;
- prepared with a sense of responsibility to customers and society; and
- in line with the principles of fair competition generally accepted in business.

The Committee of Advertising Practice (CAP) devises these Codes. In November 1998, the CAP agreed a "Help Note" that aimed to give guidance on the way that price claims should be handled in advertising material (a copy of the Help Note is reproduced in Appendix 4).

The regulatory responsibilities of OFGEM under the Gas Act and general competition legislation are summarised in chapter 2. Of greatest relevance is the requirement to ensure that BGT, as the dominant supplier, does not behave in a manner that may restrict, distort, or prevent competition. In addition, OFGEM is responsible for ensuring BGT's compliance with Standard Condition 13 of its licence that places prohibitions on

[17] BGT has also said that the Independent Television Commission is the appropriate regulatory body for broadcasts.

[18] Broadcast advertising is regulated by the Independent Television Commission, which has similar guiding principles to the ASA.

undue discrimination, undue preference, and predatory pricing. The marketing condition, described in section 2.2(c), includes a requirement on all domestic gas suppliers to take all reasonable steps to train staff who are in direct contact via doorstep sales or telephone sales, so that advice they give to customers is not misleading.

5.5 ASA's Assessment of BGT's Advertising

Since January 1998, the ASA has received 57 complaints relating to BGT's advertising. This has lead to the ASA initiating 14 formal investigations, and 43 informal investigations.[19] Of the 11 completed formal investigations, the ASA has found BGT in breach on 6 separate occasions. Of the 41 completed informal investigations, BGT has been found in breach on 4 occasions. (A list of the ASA's formal investigations into BGT's advertising is provided in Appendix 6.)[20]

The ASA recently met with BGT to discuss concerns relating to ongoing problems with its advertising. BGT assured the ASA that in future the CAP Copy Advice team would see its new advertising material before it is published.

5.6 Analysis

Advertising may be regarded simply as evidence of vigorous competition. However, it is important to distinguish promotion of the company's brand and fair but tough knocking copy from misleading advertising, which may include, among other things, information about price and other offers and denigration of competitors.

The ASA may uphold complaints against specific examples of BGT's misleading advertising, but its remit does not extend to considering its cumulative effect on the development of competition. In particular, the ASA's remit does not extend to considering the cumulative effect on the development of competition of misleading advertising by a dominant supplier with an established reputation. Misleading advertising in these circumstances could have a pre-emptive effect by preventing competitors establishing themselves in the market.

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[19] The ASA deals with such referrals in one of two ways. These are:
- formal investigation, where the case is put to the ASA Council for formal adjudication; and
- informal investigation, where the case is considered by the ASA secretariat. These tend to be cases that the ASA deem minor or clear cut.

[20] BGT has also been found in breach by the ITC for some similar material that has been broadcast.

MORI research, commissioned by OFGEM and the National Audit Office,[21] and published in November 1998 found that a minority of customers found comparing suppliers' prices and other offers confusing. The combined effects of misleading advertising by BGT and other suppliers may contribute to this confusion.

5.7 OFGEM's Position

OFGEM shares respondents' concerns that BGT has continued to breach the CAP Guidelines. OFGEM is encouraged that BGT, in future, will seek pre-approval of all its new advertising from the CAP Copy Advice Team.

BGT's advertising is bound by the provisions of general competition law. The existing Competition Act 1980 will be effectively repealed by the Competition 1998, which comes into force in March 2000. The Competition Act 1998 gives OFGEM increased powers of investigation and enforcement when it comes into effect. From that date, the DGGS will be able to use his concurrent powers to take very decisive action. This includes the ability make interim decisions, and the ability to impose significant financial penalties, if a supplier abuses its dominant position in breach of the Chapter II prohibition. After the Competition Act 1998 comes into effect, should BGT's advertising continue to breach CAP guidelines,[22] the DGGS would consider very carefully whether the nature of BGT's advertising, of itself, or when taken together with other initiatives by BGT, constitutes a course of conduct that breaches the Chapter II prohibition.

OFGEM shares respondents' concerns that BGT's advertising costs should be properly reflected in the prices that it charges customers. For example, the start-up costs of advertising a new tariff or offer targeted to particular customers should be borne over time by those customers taking up this new tariff or offer. As part of our review of BGT's supply price control, and in any assessment of whether BGT's prices are unduly discriminatory, unduly preferential or predatory, OFGEM will assess an appropriate level for BGT's marketing and advertising costs that can be passed on to customers.

[21] "Gas Competition Review: August 1998, A Research study conducted by MORI for the National Audit Office and Ofgas", Ofgas, November 1998.
[22] Or breaches the ITC's Code of Advertising Standards Practice.

6. BGT's Role in Customer Transfer Process

6.1 Issue

(a) BGT's Role in the Customer Transfer Process

As the incumbent supplier, BGT is involved in all initial transfers of domestic customers to a new supplier.

(b) Initial Concerns

Potentially, BGT can take advantage of this position to the detriment of the competitive process in many ways. In our October 1998 document, we identified a number of areas of concern. Based upon responses to the consultation document the issues are dealt with in three sections: resolved issues, unresolved issues, and further relevant issues.

6.2 Resolved Issues

The following issues were raised for consultation in our October 1998 document, and have subsequently been resolved:

- BGT's handling cancellation forms;
- BGT's exit letter;
- BGT's acquisition pack;
- BGT entering into express contracts;
- Meter Point Reference (MPR) Numbers; and
- delays in handling final bills.

A full description of these issues is set out in Appendix 6.

6.3 Unresolved Issues

(a) Transfer Objections

Standard Condition 7(4) of the Gas Suppliers' Licence allows BGT (along with other suppliers) to object to the transfer of a customer who has failed to pay charges that have been demanded in writing and have remained unpaid for 28 days after the making of the written demand; or where the customer is bound by the provisions of a contract.

OFGEM has undertaken three audits of BGT's objection procedure in order to understand whether BGT has objected to customer transfers in accordance with this condition. Each audit has identified cases where BGT has incorrectly objected to customer transfers.

In the three audits undertaken, between the start of the third phase of the domestic market opening-up on 1 November 1997 to 4 September 1998, we found BGT had erroneously raised objections to just over 3% of transfers. If this level of erroneous objections was mirrored in the total number of transfers that took place during this period then BGT could have erroneously prevented the transfer of approximately 10,000 customers.[23]

(i) Respondents' Views

No respondents commented specifically on this issue.

(ii) BGT's View

BGT raised no specific comments relating to this issue. However, BGT has indicated that it has improved its objection procedures following OFGEM's audits.

(iii) OFGEM's Position

We intend to continue to monitor objections raised by BGT in order to ensure that it complies with the provisions in Standard Condition 7(4).

[23] Between 1 November 1997 and 4 September 1998 400,000 objections were raised. The vast majority of these were raised by BGT. If BGT raised objections incorrectly in 3% of 400,000 objections raised then 13,200 objections were raised erroneously. At least 10,000 of these must have been raised by BGT as the incumbent supplier.

(b) BGT's Handling of Agreed Reads

A customer's new supplier is required to provide the previous supplier with an opening/closing meter read that could be used in settling the customer's bills. When the opening/closing meter read provided by the new supplier, or by Transco on the suppliers' behalf, is unacceptable to the customer or to either BGT or the new supplier the industry has agreed a way of amending the read for the purposes of determining a customer's bill – the so called Agreed Reads process. OFGEM expressed concerns about the way BGT handled the Agreed Reads process because this was a source of inconvenience to customers and potentially anti-competitive in effect. Some suppliers complained to OFGEM that BGT had not made sufficient resources available to enable it to monitor the process, agree the read with other suppliers and to produce final bills in a timely manner. There was also a suggestion that staff in BGT's call centres, when receiving complaints from customers about the delay in the receipt of the final bill, were misleadingly blaming the delay on the new supplier. As of January 1999, BGT had built up a backlog of about 42,000 outstanding Agreed Reads. In some cases, this has led to delays of over 70 days.

(i) Respondents' Views

Several respondents said that the problem was caused by BGT failing to allocate sufficient investment to the systems that support the transfer process. Respondents claimed that this was a deliberate management decision on the part of BGT.

Several respondents expressed concern that BGT's backlog in processing Agreed Reads resulted in higher costs for other suppliers that had to deal with enquiries from their new customers. In addition, respondents expressed the view that BGT was continuing to ascribe blame for the delay on new suppliers. One respondent said that BGT continued to pursue customers to settle their debt on final accounts when BGT knew a disputed meter read was being handled through the Agreed Reads process.

To overcome these problems, several respondents asked OFGEM to ensure that BGT allocates its resources to allow it to process Agreed Reads in a timely manner. Several respondents asked us to ensure that BGT did not continue to ascribe blame for its poor Agreed Reads performance to the customer's new supplier.

(ii) BGT's View

BGT raised no specific comments relating to this issue.

(iii) OFGEM's Position

We are encouraged that BGT is working with the industry in the following ways to combat problems related to the Agreed Read process.

First, BGT is working with other suppliers to ease problems experienced with Agreed Reads by sending data between companies electronically, rather than by fax or telephone. This should improve the audit tracking for Agreed Reads and highlight backlogs sooner. In addition, BGT aims to establish a web-site for its outstanding Agreed Reads.

Second, the Domestic Suppliers Code of Practice Group aims to set standards of performance for processing Agreed Reads. Suppliers, in agreeing revised meter readings, will in normal circumstances aim to respond within set timescales. For agreed reads received electronically before 9 am the turnaround will be 3 working days. For agreed reads received via any other route, prior to 9 am, the turnaround time will be 6 working days. While there are no formal penalties for poor performance, compliance with these standards will be reported to the Code of Practice working group and to OFGEM.

Although these developments will help to ease some of the problems associated with the Agreed Reads procedure we remain concerned that BGT's poor performance in this area damages the reputation of other suppliers and the development of competition. Following lengthy discussion with BGT to resolve the issue, OFGEM took action in January 1999 to undertake a formal investigation under the Competition Act 1980 on the grounds that BGT's conduct is likely to restrict, distort, or prevent the development of competition. OFGEM is nearing completion of this investigation and we expect to publish our conclusions later this month.

6.5 Further Issues Raised by Respondents

Respondents to our October 1998 document raised three additional issues. These relate to customers moving home, delays in the returners' process and meter data. These issues are discussed below.

(a) Customers Moving Home

When a customer moves home, he or she will automatically enter a deemed contract with the gas supplier to the new property until such a time as the customer enters an express contract and transfers to the supplier of his or her choice.

(i) Respondent's Views

One respondent expressed concern this process confers a substantial advantage on BGT as the dominant incumbent.

(ii) BGT's Views

BGT raised no specific comments relating to this issue.

(iii) OFGEM's Position

OFGEM appreciates that customers may wish to have their chosen supplier in place when they initially move into a property. However, we believe that this issue is best addressed by reducing the time-scales involved with transfers in general rather than by introducing new arrangements solely for customers moving home.

(b) Delays in the Returners' Process

Where customers have been transferred in error, the supplier that has erroneously acquired the customer will request the old supplier to transfer the customer back using the original transfer meter reading (this preserves the continuity of billing by the old supplier). This is known as the Returners' Process and it is intended to reduce the inconvenience for the customer.

(i) Respondent's Views

Several respondents claimed that BGT did not process returning customers in a timely fashion. This allowed backlogs to build up. One respondent claimed that BGT ascribed blame to the suppliers that erroneously received the customers, damaging the reputation of BGT's competitors. One respondent said that as the supplier to whom a customer has been erroneously transferred is responsible for the energy and transportation charges until the customer transfers back to BGT, there are significant incentives for BGT to delay returning these customers.

(ii) BGT's View

BGT raised no specific comments relating to this issue.

(iii) OFGEM's Position

The industry has put in place new procedures to reduce the incidence of erroneous transfers. In addition, BGT assured OFGEM that it would dedicate sufficient resources to clear its backlog for processing returners. The backlog has now been cleared. We will continue to monitor BGT's performance in this area.

(c) Meter Reading

During the rollout of domestic competition, it became evident that Transco and BGT had different systems for recording customers meter serial numbers. To ensure that new suppliers customers' confirmations were not hindered by this discrepancy, the so-called "fuzzy matching" facility was developed. This partially matches the meter serial number attributed to a meter read by BGT with the meter serial number held on Transco's database.

(i) Respondent's Views

One respondent expressed concern that "fuzzy matching" allowed BGT to avoid some of the costs other suppliers incur in correcting information held on Transco's system.

(ii) BGT's Views

BGT raised no specific comments in relation to this issue.

(iii) OFGEM's Position

While "fuzzy matching" is, in principle, available to all shippers, it was developed specifically for BGT. We are concerned that "fuzzy matching" may reduce the incentive for a shipper to submit full and complete meter serial numbers and other meter asset information. In particular, we are concerned that this fails to comply with the Transco's Network Code provisions that oblige shippers to use reasonable endeavours, including giving appropriate instructions to meter readers, to inform Transco of incorrect meter details.[24]

[24] Network code, paragraph M3.2.5(i)

We have raised this issue with Transco as part of our ongoing work on securing effective competition in metering. Transco has proposed to review the relevant provisions of the Network Code and to complete this review by December 1999.

Chapter 7 – Summary

7.1 Introduction

In October 1998, we published a review of the development of competition in the gas market.[25] In that review we sought views on whether BGT had gone too far in defending its position and if so, whether its behaviour was or had been a serious impediment to competitors' emergence and development.

More specifically we sought views on a number of initiatives undertaken by BGT, which individually or taken together might have had the intention or effect of restricting, distorting or preventing the development of competition in the domestic gas market. These initiatives were:

- BGT's 'Dual Fuel' offer;
- BGT's offers of complementary products or services;
- some forms of BGT's advertising; and
- the potential for BGT to take advantage of its dominant position during process by which customers are transferred from BGT to other suppliers.

7.2 BGT's 'Dual Fuel' Offer

Based on our preliminary analysis, OFGEM does not consider BGT's 'dual fuel' offer to be predatory and thus contrary to Standard Condition 13 of BGT's Gas Suppliers' Licence. BGT's 'dual fuel' bills generally cover attributable costs and where they do not the difference is relatively small. OFGEM considers that there is scope for further analysis to improve our estimates of BGT's attributable costs. This work will be taken forward as part of our review of BGT's price control.

OFGEM's analysis of alternative packages shows that customers can receive gas and electricity at a significant discount to BGT's 'dual fuel' offer.

[25] "Review of the Development of Domestic Competition", Ofgas, October 1998.

7.3 BGT's Offers of Complementary Products and Services

OFGEM's 1997 investigation into BGT's Goldfish credit card established principles for assessing whether complementary products were anti-competitive, in particular whether they tied gas customers to BGT; or unduly discriminatory, unduly preferential or predatory. In general, OFGEM has no evidence to suggest that BGT is not operating its current range of complementary products in accordance with these principles.

However, in light of respondents' concerns, OFGEM has requested an assurance from BGT that promotional material relating to its insurance initiative makes it clear that the discount is not related to the continued supply of gas by BGT. In addition, OFGEM considers that BGT's and Sainsbury's initiative should be treated in a similar way to BGT's dual fuel discount. On this basis, OFGEM will examine this initiative in more detail as part of our review of BGT's price control.

7.4 BGT's Advertising

OFGEM considers that the cumulative effect of misleading advertising by BGT, given its position as the dominant incumbent with an established reputation, has a detrimental effect on the development of competition. Misleading advertising in these circumstances could have a pre-emptive effect by preventing competitors establishing themselves in the market.

OFGEM is encouraged that BGT has recently assured the ASA that, in future, all of its new advertising will be pre-approved by the CAP Copy Advice Team. After the Competition Act 1998 comes into effect, should BGT's advertising continue to breach CAP guidelines,[26] the DGGS would consider very carefully whether the nature of this advertising, of itself, or when taken together with other initiatives by BGT, constitutes a course of conduct that breaches the Chapter II prohibition. OFGEM also intends to ensure that BGT's advertising is properly reflected in the prices that it charges customers. This work will be taken forward as part of our review of BGT's price control and any future investigation into whether BGT's prices are unduly discriminatory, unduly preferential or predatory.

[26] Or continues to breach the ITC's Code of Advertising Standards Practice.

7.5 BGT's Role in the Customer Transfer Process

Many of the issues raised in our October 1998 document have since been resolved. However, OFGEM remains concerned that BGT's poor performance in relation to the Agreed Reads process is continuing to damage the reputation of new suppliers and the development of competition. Accordingly, OFGEM has investigated BGT's performance in this area under the Competition Act 1980 on the grounds that BGT's conduct is likely to restrict, distort or prevent the development of competition. OFGEM expects to publish the conclusions of this investigation later this month.

The transfer process is a important factor in determining customers' view of competitive process and whether it is attractive to switch suppliers, and in particular to switch away from BGT as the incumbent. Therefore, OFGEM will continue to monitor BGT's performance in the customer transfer process to ensure that BGT does not deliberately, or otherwise, take advantage of its dominant position.

7.6 Cumulative Effect of BGT's Initiatives

OFGEM has found that taken in the round, BGT's market initiatives discussed above do not, on present evidence, constitute an anti-competitive course of conduct. However, OFGEM has proposed some action regarding individual elements of BGT's behaviour where they may have an anti-competitive effect. OFGEM will continue to closely monitor BGT's behaviour in respect of the above issues and any new issues that arise.

7.7 OFGEM'S 1999 Review of the Development of Competition

OFGEM will shortly issue a questionnaire for our 1999 review of the development of competition in the gas supply market. This will include both the domestic market and the industrial and commercial market. The 1999 review, taken together with the information in this document, will help inform our current review of BGT's supply price control.[27]

[27] See "Review of British Gas Trading's Domestic Supply Price Regulation: A Consultation Document", Ofgas, June 1999.

Appendix 1 - Director General's Section 4 Duties Under the Gas Act

The following extract from the Gas Act 1986, as amended by the Gas Act 1995, sets out the Director General's duties:

"4.–(1) The Secretary of State and the Director shall each have a duty to exercise the functions assigned to him by or under this Part in the manner which he considers is best calculated–

(a) to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;

(b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised or required by their licences to carry on; and

(c) to secure effective competition in the carrying on of activities the carrying on of which is required to be licensed under section 7A below.[28]

"(2) Subject to sub-section (1) above, the Secretary of State and the Director shall each have a duty to exercise the functions assigned to him by or under this Part in the manner which he considers is best calculated–

(a) to protect the interests of consumers of gas conveyed through pipes in respect of the prices charged and the other terms of supply, the continuity of supply, the quality of the gas supply services provided and the exercise of rights under this Part to enter their premises;

(b) to promote efficiency and economy on the part of persons authorised by or under this Part to carry on any activities, and the efficient use of gas conveyed through pipes; and

[28] Licensing of shippers and suppliers.

(c) to secure effective competition–

(i) in the conveyance of gas through pipes to pipe-line systems and to areas to which it has not previously been so conveyed;

(ii) in the supplying and laying of service pipes; and

(iii) in the carrying on of activities ancillary to those mentioned in sub-section (1)(c) above;

and a duty to take into account, in exercising those functions, the effect on the environment (whether by way of pollution or otherwise) of activities connected with the conveyance of gas through pipes.

"(3) In performing his duty under sub-section (2) above to exercise functions assigned to him in the manner which he considers is best calculated to protect the interests of consumers of gas conveyed through pipes in respect of the quality of the gas supply services provided, the Secretary of State or, as the case may be, the Director shall take into account, in particular, the interests of those who are chronically sick, disabled or of pensionable age.

"(4) In this section 'environment' and 'pollution', in relation to the environment, shall be construed in accordance with section 1 of the Environmental Protection Act 1990.

"(5) In this Part, unless the context otherwise requires, 'licence' means a licence under section 7[29] or 7A[30] below and 'licence holder' shall be construed accordingly."

[29] Public Gas Transporters' licences.
[30] Shippers and Suppliers' licences.

Appendix 2 – Guidance on Interpreting Standard Condition 13[31]

A2.1 Introduction

A key feature of Ofgas' proposals for the control of BGT's prices to domestic customers is the introduction of regulated tariff caps. A primary reason for proposing this form of regulation is to protect customers without creating distortions in the market as it is opened up to competition. More specifically, Ofgas considers that with all customers safeguarded by being offered a regulated tariff, BGT would be freer to introduce new tariffs in response to market developments, without specific prior approval by Ofgas.

However, BGT is concerned that the combined effect of the regulated tariff caps proposed by Ofgas and standard Condition 13 of gas suppliers' licences, which prevents a dominant supplier from undue discrimination or undue preference, would effectively prevent it from competing fairly in the competitive market.

This appendix seeks to address these issues by providing preliminary guidance to BGT, competing suppliers and other interested parties on how Ofgas perceives the regulated tariff caps interact with the provisions of Standard Condition 13.

A2.2 Standard Condition 13

Where a supplier is in a dominant position in the market for the supply of gas, Standard Condition 13 prohibits the supplier from showing undue preference or exercising undue discrimination against any person or class of persons.

Standard Condition 13 is more stringent before competition is established than after. In the absence of established competition, the condition applies uniformly across the whole of the domestic market in Great Britain.

When competition is established, a supplier may supply or offer to supply gas to all customers in an area (or class) on terms which are reasonably necessary to meet the terms of its competitors, provided that it does not set predatory or unduly onerous prices

[31] Reproduced from: "Supply at or below 2,500 therms a year – BGT: the Director General's Final Proposals", Ofgas, November 1996.

to any customers, and does not show undue preference or exercise undue discrimination against customers within that area or class.[32] Thus the restrictions on varying prices across customers, for example in different areas, are eased once competition is established.

Standard Condition 13 applies to any public gas supplier that is dominant in the market. It does not apply to non-dominant suppliers. Therefore, should there come a time when BGT is no longer a dominant gas supplier, then it would not be restricted by Standard Condition 13.[33]

A2.3 BGT's Concerns

(a) Undue Discrimination and Unduly Onerous Pricing

BGT does not disagree that, at the outset of the price control, supplying or offering to supply customers on the basis of Ofgas' regulated tariffs would not be unduly discriminatory, since Ofgas has taken care to ensure that each tariff is in line with the costs of supplying the customers served by the tariff.

However, BGT argues that with the passage of time its supply costs will change, for example, as a result of efficiency savings, and that, as competition is introduced, new information will be revealed about its costs. BGT is concerned that the average level of costs might fall relative to the level of the tariff caps, or that the costs attributable to different categories of customer might fall (or rise) at different rates, whereas there would be uniform reductions in all regulated tariffs, via RPI-X price control. BGT believes that in either of these circumstances, this could lead to undue discrimination between customers on the different tariffs. In other words, if BGT charged up to its regulated tariff caps it could be accused of overcharging customers as a whole or overcharging customers on one or more regulated tariffs, relative to customers on the other regulated tariffs.

(b) Undue Preference and Predatory Prices Pricing

BGT is also concerned to ensure that it has the opportunity to introduce additional tariffs for certain categories of customer in response to competition. These tariffs could have a lower price or be a different kind of tariff, for example, a tariff without a standing

[32] Classes of customer are defined according to the circumstances of supply. For the purposes of the domestic gas market, an area must contain no less than 100,000 domestic premises.
[33] Although, if BGT subsequently resumed a dominant position then Standard Condition 13 would apply.

charge. BGT believes that the combination of the regulated tariffs and Standard Condition 13 might preclude the development of its tariff structure in this way.

A2.4 Ofgas' Position on Undue Discrimination and Unduly Onerous Pricing

The price capped element in each of Ofgas' regulated tariffs has been set such that BGT's regulated tariffs will cover efficient levels of costs, and an appropriate profit margin, for the three year duration of the price control.

If BGT lowers its average level of supply costs below those used by Ofgas in setting the price capped tariffs, then under RPI-X incentive regulation, the regulated business is entitled to retain the extra revenues, for the duration of the price control, resulting from those unanticipated efficiency savings. Thus BGT would still be able to price at the level of Ofgas' regulated tariffs, but with lower average costs BGT's profit margin on each of the tariffs would increase.

If during the course of the price control period the costs of supplying the group of customers on one regulated tariff fell relative to the supply costs of another, then this would imply a higher profit margin was being earned on the lower cost tariff. However, for discrimination to be ' undue' differences between the price:cost ratio of different tariffs must be significant.[34] In other words, the implied profit margin would have to be significantly greater than the equivalent contribution from other tariffs for a regulated tariff to be unduly discriminatory.[35]

Under Ofgas' proposals, only in very specific circumstances would BGT be allowed to sub-divide a regulated tariff or raise the price capped component of such a tariff. It would involve a detailed investigation and licence modification. Changing the relative levels of regulated tariffs (or subsets of a tariff) would have to be clearly justified based on the supply costs attributable to the class of customers concerned, and on that basis alone. This means that if BGT were to lower prices to some customers to meet established competition (as is able to do under Standard Condition 13), then it could not increase prices to other customers on regulated tariffs, to recover foregone revenue.

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[34] LEB vs Springate: "so extravagant as it must be wrong".

[35] For Ofgas' approach, see "Referral by the Gas Consumers Council relating to discounts for customers paying by Direct Debit: The Director General's Decision", Ofgas, May 1995 and "Investigation into discounts for British Gas Supply's tariff customers paying promptly or by direct debit: The Director General's Decision, Ofgas, February 1996.

A2.5 Undue Preference and Predatory Pricing

As explained above, BGT has more pricing flexibility under Condition 13 once competition has been established, when it is able to price in a way that is necessary to meet the established competition. Ofgas' particular concern in this review has been to ensure that in those circumstances all customers are protected from high prices by virtue of the regulated tariffs.

However, given British Gas' dominant position, even when competition has been established, it will be necessary to prevent British Gas from supplying or offering to supply at prices so low that they could unfairly affect the development of competition. Such pricing is sometimes referred to as predatory pricing.

Generally, predatory pricing is suspected if prices do not even cover the costs that can be directly attributed to that group of customers. However, predation may also occur where prices are set at the same level as, or above, attributable avoidable costs. Whether prices are predatory or not is best judged against the result that they are designed to achieve; this will necessarily depend on the circumstances at the time. While competition is established but not fully effective, Ofgas considers that it might in principle be possible for BGT to set prices which were predatory in intent[36] even if those prices were set at a level sufficient to cover attributable avoidable costs.

Ofgas is therefore minded to establish a threshold level for consideration of predatory behaviour. Prices set such that they do not cover all BGT's attributable avoidable costs, including gas, would *prima facie* be considered to be predatory and warrant regulatory investigation. The main focus of enquiry would be the extent to which BGT recovered its gas costs within prices. This is because, of the cost elements all suppliers face, it is the largest element on which competitors can attempt to secure advantage. An investigation would therefore consider whether the prices incorporated an allowance for gas costs above a certain minimum level.

The lowest allowance for the gas cost element could be that associated with a supply limited in quantity both as to size and duration – for example, a spot price for

[36] i.e. With the intention of deterring or eliminating competition so as to increase profits subsequently.

immediate delivery. Such prices, at present, would be relatively low, though over time they will probably vary greatly.

A more comprehensive, sustainable and therefore more justifiable threshold would be longer-term spot price estimates, including an allowance for the value of swing. Prices set to cover all attributable avoidable costs including the longer run spot price would not normally need to be given further consideration; lower prices would require close investigation. Because the competitive market is immature, Ofgas is conscious that the risks of setting too low a threshold are probably greater than the risks of setting one too high.

A2.6 Conclusion

On this basis, Ofgas believes that the requirement on BGT to continue to offer a range of regulated tariffs throughout the price control period is consistent with, and no more onerous that, the requirement of Standard Condition 13 not to discriminate unduly or to charge unduly onerous prices.

Appendix 3 – Analysis of BGT's Dual Fuel Offer

A3.1 BGT's Dual Fuel Costs

The tables below provide a summary of estimates of BGT's 'dual fuel' costs for direct debit and standard credit customers. Figures marked with * have been removed at BGT's request on the grounds of commercial confidentiality.

TableA1 – BGT's Direct Debit Dual Fuel Attributable Costs[1], 1998/99

Gas Cost	Customer cost (£)	Commodity cost (p/kWh)	Electricity Cost	Customer cost (£)	Commodity cost (p/kWh)
Supply costs(2)	17.86	0.001	Supply costs(3)	*	*
Purchase costs		0.694	Purchase costs (inc. contract premium)(3)	*	*
Storage		0.026	DUOS + TUOS(4)	25.34	1.65
Transportation (inc. metering)	10.00	0.57	Profit margin	0.16	0.019
Profit margin	0.15	0.019	Fossil Fuel Levy(5)	1.50	
Total	28.01	1.31	Total	*	*
Total costs at average consumption		322.09	Total costs at average consumption		206.28

Source: BGT, Ofgas

Notes:

1. Based on an average direct debit consumption of 22,449 kWh (766 therms) a year for gas and 3,300 kWh (112 therms) for electricity.
2. Attributable supply costs taken from Table 13a, Appendix 4 of "Review of British Gas Trading's Domestic Supply Tariffs, A Decision Document", Ofgas, July 1998.
3. Attributable supply costs for electricity provided by BGT.
4. DUOS and TUOS taken from Table 2, "Reviews of Public Electricity Suppliers 1998 – 2000 Price Controls and Competition Consultation Paper", OFFER, July 1998. An average is shown in the table.
5. Fossil Fuel Levy assumed as 0.7% of final bill. Average levy shown in table as a customer cost.

Table A2 – BGT's Standard Credit Dual Fuel Attributable Costs[1], *1998/99*

Gas Cost	Customer cost (£)	Commodity cost (p/kWh)	Electricity Cost	Customer cost (£)	Commodity cost (p/kWh)
Supply costs(2)	33.44	0.050	Supply costs(3)	*	*
Purchase costs		0.694	Purchase costs (inc. contract premium)(3)	*	*
Storage		0.026	DUOS + TUOS(4)	25.34	1.65
Transportation (inc. metering)	10.00	0.57	Profit margin	0.16	0.019
Profit margin	0.15	0.019	Fossil Fuel Levy(5)	1.56	
Total	43.59	1.359	Total	*	*
Total costs at average consumption		277.78	Total costs at average consumption		230.51

Source: BGT, Ofgas

Notes:

1 Based on an average standard credit consumption of 17,233 kWh a year (588 therms) for gas and 3,300 kWh a year (112 therms) for electricity.

2. Attributable supply costs taken from Table 13a, Appendix 4 of "Review of British Gas Trading's Domestic Supply Tariffs, A Decision Document", Ofgas, July 1998.

3. Attributable supply costs for electricity provided by BGT.

4. DUOS and TUOS taken from Table 2, "Reviews of Public Electricity Suppliers 1998 – 2000 Price Controls and Competition Consultation Paper", OFFER, July 1998.

5. Fossil Fuel Levy applied as 0.7% of final bill. Average levy shown in table as customer cost.

Appendix 4 – Committee of Advertising Practice Help Note[37]

HELP NOTE ON PRICE CLAIMS IN UTILITIES ADVERTISING

Background

These guidelines, drawn up by the Copy Advice team with the help of the utilities industry, are intended to help advertisers, agencies, media and those direct sellers who distribute advertising material interpret the rules in the British Codes of Advertising and Sales Promotion as far as they relate to the subject discussed. They do not constitute legal advice or new Code rules and do not bind the ASA Council in case of a complaint about an advertisement that follows them.

1. General

1.1 Price claims should not exaggerate the availability or extent of benefits likely to be obtained by customers. Those stating "up to" and "from", particularly, should be clear, accurate and, where few will benefit from the maximum or minimum price, suitably qualified. For example, a claim that customers can save up to £100 is likely to mislead either if less than 10% of customers can save that amount or if 10% can save £100 but the other 90% save nothing.

1.2 A prominent claim (e.g. a headline) that implies that all customers *will* save is likely to mislead if a less prominent qualification (e.g. a footnote) contradicts it by explaining that only certain customers will. The prominent claim should be amended either to reflect those customers to whom it applies or to remove the implication that all customers will save. A prominent, unqualified, claim that implies merely that customers *are likely to* save should be based on up-to-date, industry-recognised average consumption figures (i.e. those issued by Offer and

[37] Provided by the Advertising Standards Authority.

Ofgas); the figures used as the basis of the comparison should be stated in a footnote.

1.3 If the inclusion or exclusion of prompt-payment discounts or late-payment penalties from price claims is likely to affect the customer's understanding of the claim, advertisers should state this clearly in the body copy. (Though see 3.2 below for advice relating to comparisons).

2. Savings Against Own Previous Prices

2.1 Advertisers making savings claims against their previous prices should state in the body copy whether a significant proportion of the saving derives not from cheaper fuel but from some other factor (e.g. changes in the method of payment or level of applicable VAT). A footnote can be used to provide full qualification.

3. Savings Against a Competitor's Prices

3.1 Comparisons should be clear and fair. The ASA will determine fairness based on whether customers would consider services comparable and whether elements of a comparison have been presented in a way that allows customers to make an informed and rational choice. For example, advertisers should not, when quoting cheaper tariff charges than a competitor, imply that customers can save on their total bill over a given period if that saving is reduced significantly, or nullified, by higher standing charges.

3.2 Advertisers making tariff comparisons should assume that customers act rationally in selecting the best service available to them. When comparing, they should compare their tariff with their competitor's equivalent or most similar tariff (normally based on frequency of payment and payment method). For example, they should compare their direct debit (discounted) tariff with their competitor's equivalent tariff, not with their competitor's non-discounted tariff. (See 3.4 below)

3.3 Similarly, if advertisers feature in a savings claim or table of comparative prices their discounted and non-discounted tariffs, they should include their competitor's discounted tariff as well as their non-discounted tariff. They need not do so if they separate the references to the tariffs so that customers are unlikely to compare the advertiser's discounted tariff with the competitor's non-discounted tariff.

3.4 It is acceptable to compare dissimilar tariffs only if it is stated prominently that the competitor offers a tariff cheaper than that featured. The qualifying statement should be both near to and similar in size to the savings claim and/or text in the table.

3.5 Advertisers can choose which of their competitor's tariffs should be the subject of a comparison if two or more tariffs are equally comparable. They should be able to show, however, that no obviously more comparable tariff exists and should name clearly in a footnote the tariff that is the basis of their comparison.

3.6 Where a competitor's most comparable tariff differs significantly from that of the advertisers, the advertisers should state this in a footnote.

3.7 Advertisers who compare their projected prices with a competitor's present prices should state in the body copy when their prices will become available. Advertisers should use the most up-to-date prices, or confirmed future prices, as the basis of these comparisons.

4. Savings Against an Average of Competitors' Prices

4.1 In addition to following the advice in section 3, advertisers who compare their prices with an average of their competitors' prices should explain the basis of the comparison and ensure both that the identity of their competitors' is clear and that those competitor prices selected for the comparison are relevant to the audience addressed. They should not unfairly select only those competitor prices that give them an artificial advantage or include competitor prices that are irrelevant to the audience addressed.

5. Dual Fuel Offers

5.1 Advertisers who offer savings to customers who agree to the supply of more than one type of fuel should clarify this prominently (e.g. in the body copy); they should not imply that customers taking only one type of fuel can benefit from those savings when that is not true.

5.2 Advertisers who make a savings claim based both on discounts to all customers who agree to the supply of more than one fuel and on discounts that are available only to some customers for other reasons (e.g. changes in methods of payments) should distinguish between the two in the body copy.

5.3 For example, an advertiser might wish to make a dual fuel savings claim of £X based on: the maximum saving (available to some customers only); a discount for providing both gas and electricity; the saving to their quarterly-paying electricity customers who switch payment method to direct debit; and the saving to these same customers who are supplied gas by a competitor (and pay quarterly) who switch to them and change payment method to direct debit. Treating these components of the saving in order: the savings claim should be qualified to refer to "up to £Y off"; the dual fuel discount should be referred to in the body copy of the advertisement (a footnote can explain the amount); the body copy should state that the full saving can be attained only by their electricity customers who switch from paying quarterly; and the savings claim should normally be based on a comparison with the competitor's most similar gas tariff (i.e. their direct debit tariff, if they have one).

6. VAT

6.1 Unless addressed exclusively to the trade, quoted prices, including those relating to unit rates and standing charges, should include VAT payable.

6.2 If advertisers include a VAT-exclusive price as well as a VAT-inclusive price, the inclusive price should be the more prominent.

6.3 If VAT is charged at different levels for different customers, prices should include the level of VAT applicable to the largest number of the audience addressed. A footnote should state that level.

7. Regional/Local Suppliers

7.1 If advertisers refer to either themselves or their competitors as the regional/local/existing supplier, they should supply a reasonable proportion (for example, the majority) of consumers at whom the advertisement is addressed.

7.2 If advertisers refer to a competitor as the regional/local/existing supplier, they should qualify in a footnote who the supplier is.

8. Size/Degree of Qualification

8.1 Footnotes should be clearly visible to a normally-sighted person reading the advertisement material once at a normal speed.

8.2 Advertisers who are required to qualify a claim in a footnote may do so with more prominence (e.g. in body copy).

8.3 If a poster contains no body copy but the claim requires more prominent qualification than that provided in a footnote, advertisers should add a sub-heading or similar.

8.4 Whether footnotes need to be asterisked to the claim depends on several factors: for example, the importance of the qualification and the prominence of the footnote in the context of the rest of the advertisement. Advertisers should consult the Copy Advice team for further guidance.

9. The Law

9.1 Advertisers should also consider the provisions of Part III of the Consumer Protection Act 1987, the Price Marking Order 1991 and the provisions of the Code of Practice for Traders on Price Indications. In the case of comparisons relating to credit terms, special provisions apply under the Consumer Credit (Advertisements) Regulations 1989.

Advice on specific advertisements, or on subjects that are not covered in this Help Note, is available from the Copy Advice team by telephone on 0171-580 4100 or by fax on 0171-580 4072.

November 1998

Appendix 5 – BGT's Recent Formal Breaches of ASA Guidelines

Date	ASA No	Campaign	Complaint	Adjudication	Decision
19/01/99	B99-00543	"6 in a row"	Misleading, most customers benefited from 1 cut in 1998	Upheld	**Breach**
03/12/98	B98-11512	"Enjoy savings of 15%"	Advert implied savings could be made by switching, but savings only available to existing customers	Upheld	**Breach**
05/10/98	B98-09267	"guaranteed cheaper electricity prices until 2001"	1) Misleading nature of ad due to small print 2) Term Domestic credit meter not clear 3) Ability of BGT to guarantee cheaper electricity	1) and 3) Upheld 2) not upheld	**Breach**
07/07/98	B98-05927	"12% Off"	1) Consumption figure used > 50% average 2) time of savings 3) Confusion over VAT inclusive and exclusive estimates	3) Upheld 1) and 2) not upheld	**Breach**
26/03/98	B98-02734	"123 Off"	1) Unrepresentative claim 2) Unfair comparisons 3) Out of date figures used	1) & 3) Upheld 2) not upheld	**Breach**
15/01/98	B98-00376	"Option leaflet"	Standing and unit charge excluded VAT	Upheld	**Breach**
19/12/97	B97-10135	"up to £124 Off"	1) Only 1% of BGT's customers could receive quoted saving 2) 6 related complaints	1) Upheld 2) not upheld	**Breach**
18/11/97	B97-09006	"Fortune teller" "15% saving" "£154 saving"	1) Savings claims based on misleading consumption level 2) BGT did not know prices in advance	1) Upheld 2) not upheld	**Breach**

Source: ASA

Appendix 6 – Resolved Customer Transfer Process Issues

A6.1 Delays in Handling Cancellation Forms

During the rollout of competition, OFGEM received evidence that BGT imposed considerable delays in relaying cancellation notices to suppliers. This resulted in confusion for customers and bad publicity for the new suppliers and domestic competition. OFGEM received an assurance from BGT that it will not delay sending cancellation notices. Moreover, since the completion of the phased introduction of competition, OFGEM has received no evidence to suggest that there is a continuing problem with BGT delaying customer cancellation notices.

A6.2 BGT's Exit Letter

Until May 1998, BGT's "exit letter" to customers in the process of transferring to another supplier falsely implied that customers could immediately stop the transfer process. OFGEM is satisfied that BGT has made appropriate changes to its exit letter so that it no longer misleads customers in relation to whether the transfer can go ahead.

A6.3 BGT's Acquisition Pack

OFGEM expressed concern that the content of the "acquisition pack" BGT sent customers that had recently switched to other suppliers could mislead these customers into signing a contract with BGT when customers intended to seek only further information. BGT has subsequently changed its "acquisition pack" to make this distinction clear. OFGEM has no reason to believe that BGT's acquisition pack is a continuing problem.

A6.4 BGT Entering into Express Contracts

When customers who were formerly contracted to BGT under the Former Tariff Customer Scheme (FTCS, i.e. tariff terms with no notice period), move into a new home they may telephone BGT and give it an opening meter read or inform it of their new address details. Until recently BGT was not explaining to these customers that by this action they were no longer contracted under the FTCS, but had entered into an express contract with BGT and should therefore give 28 days notice if they wished to transfer to a new supplier. If they do not give such notice then BGT has the right to object to the transfer.

OFGEM understands that BGT now makes customers aware that they have entered a contract over the telephone. Contracts entered into in this way are subject to the provisions of Standard Condition 14a of the Gas Suppliers' Licence. OFGEM is currently reviewing BGT's sales audit procedures and will continue to monitor BGT's communication with customers during the transfer process.

A6.5 Meter Point Reference (MPR) Numbers

For a customer to be identified and transferred to a new supplier on Transco's systems, the shipper acting for the customer's new supplier must send Transco the customer's MPR number and postcode. All suppliers are obliged to provide their customers with information on the MPR number of the customer's meter. OFGEM expressed concern that the size and positioning of the MPR number on BGT's bills made it difficult to identify. OFGEM also expressed concern about complaints it had received that BGT was reluctant to provide information on MPR numbers over the telephone or in writing.

In response to OFGEM's concerns, BGT has increased the size of the typeface for its MPR number printed on customer bills. BGT has also assured OFGEM that it will provide customers with their MPR number upon request. To date OFGEM has received no evidence, since our consultation, to suggest that this is not happening.

A6.6 Delays in Handling Final Bills

During the rollout of Phase 3 of domestic competition BGT did not send out final bills promptly due to poor monitoring and tracking of closing reads sent to it by Transco. The issue was resolved but resulted in over 100,000 customers not receiving final bills in a timely manner. OFGEM was particularly concerned by complaints it received that suggested that BGT was blaming new suppliers for the delay. OFGEM obtained an assurance from BGT that they will not ascribe blame for the process failure to customers' new supplier.