

Client Alert

Business Litigation & Antitrust Practice Group

October 20, 2011

Office of Fair Trading Market Study on Off-grid Energy Says Consumer Law Enforcement Rather Than Regulation is Needed

On October 18, 2011, the United Kingdom Office of Fair Trading (OFT) published the findings of its market study on off-grid energy. It found that, in the vast majority of cases, competition works well and that the off-grid energy sector does not need price regulation. However, it raises concerns that some off-grid fuel suppliers may not be treating customers fairly and is examining their practices further.

Background

Market studies are carried out by the OFT under section 5 of the Enterprise Act 2002 which allows the OFT to obtain information and conduct research to allow a market-wide consideration of both competition and consumer issues. Possible outcomes of market studies include: enforcement action by the OFT, a market investigation reference to the Competition Commission (CC) for a fuller inquiry, recommendations for changes in laws and regulations, recommendations to regulators, self-regulatory bodies and others to consider changes to their rules, campaigns to promote consumer education and awareness, or a clean bill of health.

On January 25, 2011, the OFT announced its intention to perform a market study to examine the supply of off-grid energy. The study was prompted by concerns about high prices, delays in deliveries, barriers to switching and a lack of transparency in the market. Furthermore, the Minister of Energy asked the OFT to accelerate the OFT's plans to investigate the sector. The study was launched on March 15, 2011.

OFT market study key findings

The OFT found that around 4 million households rely on off-grid energy including heating oil, liquid petroleum gas (LPG) and, most recently, microgeneration (which comprises renewable energy sources such as solar panels).

Although the OFT has found that, on the whole, consumers are offered a good choice of suppliers and that price controls are not required, it specifically examined why some heating customers experienced high prices during winter 2010/2011. In particular, the OFT found a short-lived 'price spike' following a 40 percent increase in demand at a time when deliveries were constrained by severe weather conditions. However, since the OFT found that around 97 percent of off-grid customers lived in an area served by

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at least four suppliers it found that there was sufficient competition to constrain prices and that profit margins have not been excessive.

The OFT has, however, identified areas of concern in relation to consumer protection. In particular:

- **Differential pricing:** Complaints were made that some suppliers were charging a different price on delivery from that quoted when the order was made. The OFT is examining this and related issues.
- **LPG:** In relation to LPG, the OFT focused on developments since the CC market investigation into the supply of bulk LPG (2004 to 2006) which led to The Domestic Bulk Liquefied Petroleum Gas Market Investigation Orders (Orders). It considers that there is some evidence of customer switching. However, the OFT is pursuing concerns about termination rights in supply contracts. In particular, the OFT received complaints that customers may be locked into costly LPG contracts after an initial introductory rate.
- **Mis-selling:** Concerns were raised around mis-selling of solar panels. The OFT is working with the industry code operator to monitor handling of complaints.

During the course of the market study, the OFT also took action against heating oil companies and price comparison sites to prevent customers being misled when searching online for heating oil supplies. On September 9, 2011, the OFT announced that it had secured undertakings under the Consumer Protection from Unfair Trading Regulations from WCF Fuels Limited and Boiler Juice Limited which prevent them from engaging in business practices which could mislead customers.

Provisional decision not to make a market investigation reference to the Competition Commission

The OFT considered whether the domestic heating oil retail distribution market meets the test for a market reference to the CC. It did not apply the test for a reference in other fuels since it had already investigated the domestic bulk LPG market and had focused on the impact of the Orders in force. In cylinder LPG, the OFT believes that any concerns, if valid, would go wider than the supply of cylinders for domestic heating and would therefore go beyond the scope of the current market study. However, it may return to the wider cylinder LPG market at a later date. Finally, the OFT considers that all other energy markets it reviewed (microgeneration, solid fuels and electricity) have been considered within the particular context of its study in relation to their role as alternatives to heating oil and LPG rather than individually.

The OFT does not propose to make a reference to the CC in respect of the domestic heating oil retail distribution market. The OFT has not found reasonable grounds for suspecting that any feature or features of the heating oil retail distribution market in the UK may prevent, restrict or distort competition in connection with the supply or acquisition of domestic heating in the UK. It invites comments on this provisional view by **November 18, 2011**.

In conclusion, the outcome of the present inquiry concludes that there is no competition problem in the supply of off-grid energy in the UK, although concerns remain about whether consumer protection law is being applied in all cases.

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