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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

THE FUTURE OF BGC'S APPLIANCE RETAILING ACTIVITY

Memorandum by the Secretary of State for Energy

Introduction

1. I agree with the conclusion of E(DL)(81)2nd meeting that we must tackle the problems of unfair competition by removing BGC's dominant position in the market. I also agree that BGC's appliance retailing business should be privatised as quickly as possible.

2. However, I have reservations about the route for achieving these two aims advocated by the Minister of State, Department of Trade (E(DL)(81)8). If we adopt this course there will be legislative problems associated with safety and my powers of direction over BGC which E(DL) recognised (see Annex). Also, public reaction will be adverse (see below). This could be avoided if we follow the no less effective route which I have suggested (E(DL)(81)11). My preferred approach also has the advantages of minimising the otherwise high risk of

industrial action, and of easing the legislative problems.

Public Reaction

3. Some 60% of BGC's customers (9 million people), many of whom are on low incomes or pensioners, pay their bills through showrooms. Forcing BGC to dispose of them will be seen as cutting the main channel of communication between BGC and their customers. Each successive wave of closures will rekindle the issue.

4. Furthermore, as the Chairman of E(DL) made clear in his minute of 12 June, the consumer bodies are all opposed to BGC being forced to stop selling gas appliances and have advocated solving the problem by ensuring the growth of fair competition. The appliance manufacturers have expressed strong doubts about the ability of private sector retailers to expand their operations quickly; they are therefore also opposed to forced withdrawal. We have no firm evidence to contradict these views and we would be criticised for destroying BGC's appliance retailing business when we could not show convincingly that the private sector would take their place.

Safety

5. The public reaction to our disrupting the retail market in gas appliances and forcing disposal of BGC's showrooms will be compounded by the inadequacy of the present safety regime to deal with a situation where BGC did not dominate the market. E(DL) recognised that action to strengthen the existing safety arrangements would be necessary whatever course we decided on. It will however be difficult to satisfy genuine public concern without taking fresh powers to cover the installation and inspection of gas appliances (a new British Standard mentioned

at E(DL) is unlikely to cover these problems adequately). This will take time and we will not be able to announce our plans to deal with the safety problem - which everyone accepts exists - at the same time as we announce our response to the MMC Report. This will increase the presentational problems of the forced closure route.

Industrial Relations

6. The unions, who are whipping up feeling within BGC about potential job losses, would exploit concern about safety in their effort to enlist public support. We cannot rule out the possibility of extreme industrial action, including a gas strike, no matter how unreasonable the unions' position may be.

Recommendation

7. We may well not have public support if we force BGC out of retailing and disposal of showrooms. We would then have to bear the brunt of the criticism. We can, I believe, minimise these risks while at the same time meeting the problems identified in the MMC Report.

8. I propose a two-stage approach. First, BGC should establish their retail activities into a separate Companies Act subsidiary, which would operate under guidelines agreed with us and which would buy its appliances from BGC on the same terms as BGC offered them and their installation services to reputable private retailers. This would expose BGC's retailing activities to the full force of competition. There would be showroom closures (at least 250) and job losses, and gas appliance retailing by BGC might not in the event prove to be viable. But this would happen as a result of competition and market forces and would not be something for which the Government could then be criticised. This course

would also give us time to deal with the legislative problems posed by safety and doubts about our powers. If this subsidiary thrived, we could then privatise it as a going concern. I see no reason why we cannot achieve this within the same timescale as the more provocative proposal of the majority of E(DL).

9. If the Corporation were unwilling to co-operate in this procedure - and I would consult the full board, not just the Chairman - we should then start the process for serving a direction under section 7(2) of the Gas Act 1972 requiring the Corporation to cease retailing. I would make this clear to the Corporation in discussion of my proposals.

Department of Energy

D.A.R.H

18 June 1981

LEGAL POSITION

(a) POWERS OF DIRECTION

1. Section 7(2) of the Gas Act 1972 empowers me to direct the Corporation to discontinue any activity either wholly or to a specified extent. Such a direction may only be made however if I am satisfied, after consulting the Corporation, that it will not impede the proper discharge of the Corporation's statutory duties.

2. BGC's principal statutory duties (s.2(1) of the Gas Act 1972) are to develop and maintain an efficient, co-ordinate and economical system of gas supply and to satisfy, so far as it is economical to do so, all reasonable demands for gas. BGC would undoubtedly argue when formally consulted that the enforced abandonment of appliance retailing would impede these duties, and might also subsequently challenge the validity of any direction in the courts. 60% of gas bills (9 million consumers, £800m p.a.) are paid through showrooms, and although it could be argued that this could equally well be done by other means, it would be difficult for me to satisfy myself that forcing disposal of the showrooms would not in some sense impede the performance of the Corporation's duties. The only safe way of forcing BGC to sell their showrooms would thus be by new primary legislation. The Chancellor of the Duchy of Lancaster has made it clear that there is little scope for the inclusion of such legislation in the Government's legislative programme.

3. The Attorney General has advised however that there might be scope for directing the Corporation to cease retailing. It would be much harder for BGC to successfully maintain that being unable to sell appliances would

necessarily impede their statutory duties, than it would be to argue the case that the multi-function showrooms themselves were necessary to the carrying out of these duties. A final view can only be formed once BGC have formally stated their arguments.

(b) SAFETY

4. Whichever option is adopted, there will be repercussions for:

- (a) standards of gas appliances;
- (b) standards of installation and servicing.

In either case new regulations or primary legislation would be required. The option of issuing a British Standard under the Consumer Safety Act mentioned at E(DL) could not adequately cover all the problems posed.

(a) Gas appliances

5. All domestic gas appliances sold by BGC (i.e. over 80%) are covered not only by BSI standards but also by the strict standards of BGC's own Approval Division. Neither standard is mandatory; therefore if all appliance sales were transferred to the private sector there would be a risk of more unapproved appliances (including those from abroad) reaching the market unless mandatory standards were imposed at the point of sale. This could be done by orders under either the Consumer Safety Act 1978 or the Energy Conservation Act 1981 (subject to final confirmation that EC competition rules were not infringed).

(b) Installation and Servicing

6. If substantially more work shifts to the private sector there would be a need to strengthen the existing safety regime. The Gas Safety Regulations 1972 (GSR)

govern the installation of all gas appliances. They provide that only a competent person should install appliances but do not define the word "competent". Control over installers could be strengthened by a requirement that work should only be carried out by firms and gas installers who are registered as having a prescribed level of competence. An independent and strengthened CORGI would seem the best vehicle for such registration; new primary legislation may well be desirable to enable CORGI to carry out such a role.

7. BGC presently discover a large number of unsafe appliances in the course of their normal servicing activities. The Gas Safety (Rights of Entry) Regulations 1976 (GS(ROE)R) give BGC power to disconnect a dangerous appliance, subject to right of appeal to the Secretary of State, coupled with a power of entry. Whichever route were chosen, private installers would not have any power to disconnect dangerous appliances unless it were specifically given to them.

8. One solution would be to impose a requirement under the GSR upon all private sector installers to notify BGC of all new installations they have undertaken. BGC would then carry out spot checks using their existing powers under GS(ROE)R. Amending primary legislation would be required to enable BGC to charge for this service.

9. Another course would be to expand the role of the Department of Energy's Gas Standards Branch to cover inspection. This would require extra manpower, and new powers as the existing regulations providing powers of entry and inspection apply only to officers of BGC.

10. This is only a preliminary analysis of what is a complicated area, but it is clear that new primary

legislation would be the simplest and most satisfactory way of resolving the problems posed by BGC's withdrawal from appliance retailing and the resulting decline in their share of installation and service work. My proposal provides an opportunity, within the same overall timescale as the Minister for Consumer Affairs' proposal for these legislative problems to be resolved; the phased nature of the Minister of State's route does not.