

Anarchy in our LPG industry?

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On 17th February, the Ministry of Commerce and Consumer Affairs placed full-page colour advertisements in several newspapers to announce that 'Munda gas is now in Sri Lanka. The first shipment has just arrived.' This unprecedented act by a government ministry involving the misuse of a large sum of public money was covered only in a minor news item appearing in the Sunday Times of 24th February. Who gave the Ministry the authorization to spend taxpayers' money to promote a private company that has no connection with the Government? It was reported that the Additional Secretary to the Ministry of Commerce and Consumer Affairs had stated that he had not seen the advertisement and was unaware of an allocation being made to pay for these advertisements! Is this yet another nail driven into the coffin of law and order and proper governance in our country? Or, are we naively hoping that ignoring such serious malpractices is the price we will have to pay to get LPG at a lower cost?

Even the claim 'The first shipment has just arrived' made in the above advertisement placed by the Ministry is false. According to sources at the Galle Port, the Mundo Gas storage barge Formentera that was towed into Galle Port on 13th February was empty. According to other informed sources, Mundo Gas doesn't have the necessary insurance cover to carry LPG in its storage barge at the Galle harbour. Is that why Mundo Gas hasn't delivered any LPG even one month after the advertisement placed by the Ministry on their behalf?

Liberalisation and privatisation will lead to anarchy and chaos if the Government starts openly supporting favoured competitors, instead of providing a level playing field and implementing proper regulatory procedures. Why haven't our media watchdogs made a fuss about a Ministry blatantly misusing taxpayers' money to support a private company in a competitive marketplace? Why haven't they asked why a Ministry is promoting a new entrant that has lost all credibility through numerous unfulfilled promises made repeatedly over the past year? Are our media also applying journalistic double standards? For example, on 17th February, 'Rs. 67 Shell shock' screamed a headline on the front page of a leading newspaper, presumably voicing the desperation felt by consumers about Shell Gas's skyrocketing prices. But, strangely enough, when Laugfs Gas raised their price by a whopping Rs. 85 one week earlier on 10th February, the same newspaper didn't even bother to report it! Is this simply biased journalism and sensationalist headline writing, or is it a sinister attempt to discredit one supplier in favour of another in an increasingly competitive marketplace?

In spite of numerous public announcements made jointly with the Minister for Commerce and Consumer Affairs over the past 9 months, Mundo Gas still hasn't supplied any LPG to the Sri Lankan

market. In February 2002, Commerce and Consumer Affairs Minister Ravi Karunanayake signed a Memorandum of Intent with Mundo Gas. According to a newspaper report published on 23rd February 2002, Mundo Gas was to commence operations by mid May 2002 with an estimated investment in the region of US Dollars 2 billion, for the supply and distribution of LPG at a retail price ranging from 325 to 350 Rupees per 12.5kg cylinder. Over the past 9 months, through frequent statements to the media, Mundo Gas promised deliveries 'within a couple of weeks'. During the same period, Mundo Gas progressively put up their price from the initial Rs. 325 to Rs. 565 a few days ago, without delivering even a single cylinder of LPG! A headline appearing in a government-controlled newspaper on 6th March 2003 says once again, 'Mundo Gas in two weeks!'

The Government has abandoned its principles of fair play, transparency and good governance by choosing to spend public money to promote a private supplier in a competitive marketplace. Was it perhaps a misguided attempt to bring in more suppliers in the hope of reducing domestic LPG prices? Appointing an independent and competent Regulator is the only way to open up the LPG market for free and fair price competition by attracting serious suppliers with the necessary resources and commitment to develop our LPG industry. What we are currently seeing is a free-for-all, instead of free-market forces that will provide price benefits to consumers combined with acceptable safety standards achieved through necessary infrastructure investment.

For example, the safety aspects of unloading LPG at the busy Galle port have never been properly addressed. Any accident involving a ship carrying LPG can have serious consequences, especially if it happens near a large urban community such as in Galle. According to an Internet report, an explosion aboard an LPG tanker M/T Mundogas Europe docked at Subic Shipyard in the Philippines killed 5 people in December 1997. A shipyard statement had said that the vessel was being prepared for unloading when an explosion occurred in a cargo tank. In any such accident, the resulting harm to the population will often be aggravated by the fact that very little compensatory money will be available to repair or alleviate the damage, since the vessel responsible for such an accident is very unlikely to have the necessary insurance cover.

Such safety risks associated with ships discharging LPG at the Colombo Port prompted the Government to demand the construction of an import storage terminal that met international safety standards as part of their terms of privatising Colombo Gas. For the same reason, they unilaterally modified their agreement with Shell, forcing Shell to abandon its 9km pipeline from the Shell terminal to the Port and to revert to an offshore CBM (Conventional Buoy Mooring) berthing facility with a 3km off-

shore pipeline. Shell Gas was obliged to invest US\$ 85 million to build a modern LPG terminal at Kerawalapitiya in the Muthurajawela, with comprehensive safety features.

LPG is a hazardous product that requires very strict procedures to ensure public safety in every operational phase starting at discharging from a ship, right through to final usage. One would expect that all new entrants to the LPG market would also have to make the necessary investment to implement such safety procedures related to their operations. But, strangely enough, new entrants to the LPG market have no obligation at all to invest in infrastructure development needed to ensure public safety during their discharging, storage, transport and delivery operations.

In a new development, according to a newspaper report on 9th March, Minister Ravi Karunanayake has said at a pre-cabinet session that gas cylinders belong to the people, not to the sellers, and that the consumers once they have bought them should be able to fill their cylinders with the Gas sold by the vendor of their choice. According to the same report, the Prime Minister has agreed to push through with this legislation. However, the Sri Lanka Standards Institute has clearly specified that LPG cylinder brand owners have to maintain (and periodically replace) their cylinders for as long as they continue in business (even several hundred years), in order to protect the consumers. Moreover, the Colombo Commercial High Court has issued an Enjoining Order preventing Mundo Gas from filling and dealing with gas cylinders belonging to and carrying the Laugfs identification mark. Laugfs have claimed that the filling of or dealing with gas cylinders belonging to Laugfs by Mundo Gas will amount to an act of unfair competition within the meaning of Section 142 of the Code of Intellectual Property Act No. 52 of 1979.

In a democratic society, rules and regulations and legal rights must be respected and upheld. However, Mundo Gas have always stated that they are going to refill cylinders from Shell and Laugfs. Have they received Government approval for making such public statements that violate existing intellectual property rights and copyright laws? Does it mean, for example, that anyone can now refill empty bottles of Coca Cola, Pepsi Cola, Elephant House and other branded soft drinks and resell them?

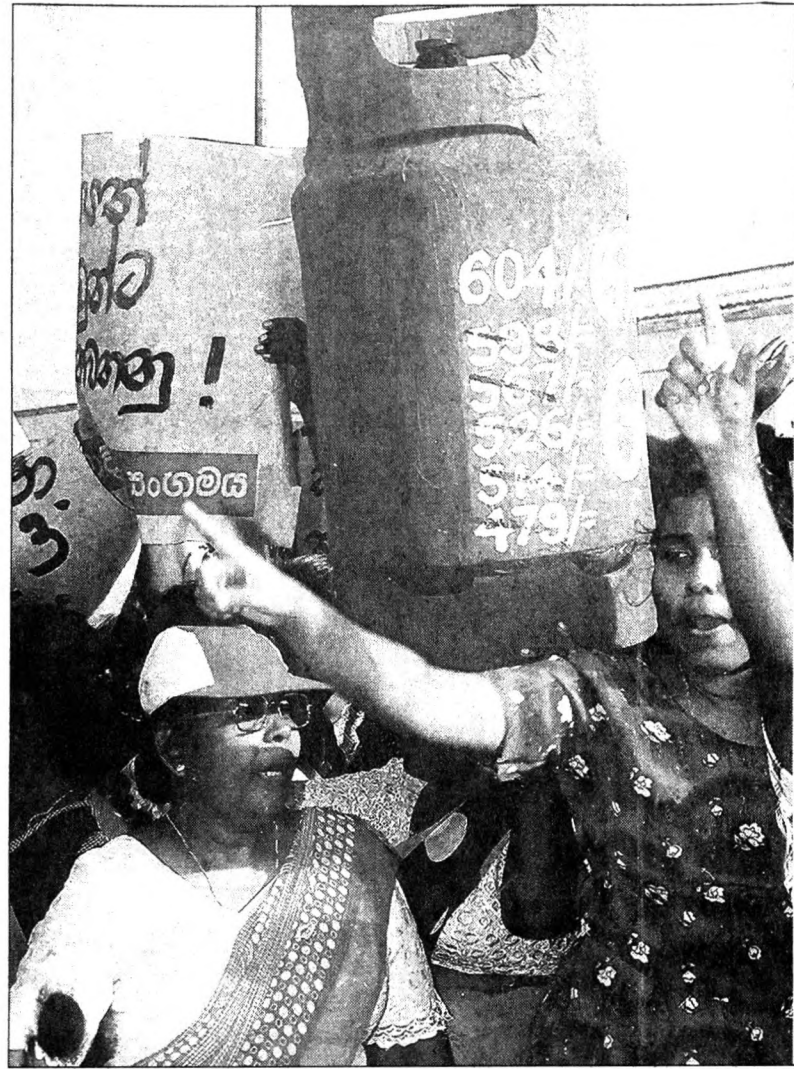
Since Mundo Gas have not made any significant investment in setting up the necessary infrastructure to distribute LPG to consumers, they would be able to sell LPG at a lower price. What will prevent LPG dealers from fleecing customers by getting empty Shell or Laugfs cylinders filled with Mundo Gas at a lower price and then reselling them as Shell or Laugfs LPG at their higher price? Who will protect the consumer when branded LPG cylinders are filled by someone who has no responsibility over the cylinder brand and therefore doesn't have to bother about safety and quality? How will customers be able to identify such cylinders?

In another new development, the Minister for Commerce and Consumer Affairs has said at a recent press conference that it was his job to bring in competition in order to bring down prices, and that three new players will enter the LPG market. He is reported to have said that in order to stop arbitrary price hikes, the Government will not enter into any agreement with new gas suppliers.

There are several important issues that arise from the Minister's above strategy to bring down LPG prices. First, without any pricing agreements or mechanisms, how will the Government be able to block price increases in an open economy? How can the Government ensure that any reductions in international prices will be passed on to consumers and not pocketed by the suppliers as increased margins? Second, according to newspaper reports, the Minister signed an agreement with Shell Gas in March 2002, which links their domestic selling price to key variables such as the international market price and the US\$-Rupee exchange rate in a transparent manner. If the recent price increases by Shell Gas have violated this formal agreement, why isn't the Government taking necessary action? If the Government couldn't influence price increases by Shell Gas in spite of 49% ownership and in spite of a formal pricing agreement, how on earth will it be able to control the prices of private companies which will also have to import all their LPG requirements at the same international market prices? According to their recent media statements, Shell Gas is following the formally agreed pricing mechanism strictly, and even pricing at levels below the formula price agreed with the Minister. If this is not true, why isn't the Government taking steps to enforce compliance with the signed agreement? Finally, given the fact that about 90% of our LPG requirements have to be imported, can we expect serious new players to enter our LPG market without some assurance of a mechanism that would allow them to recover possible increases in import costs through corresponding price adjustments?

Nearly two and a half years after the Shell Gas monopoly ended, we still haven't seen any major new players entering our LPG market. The only new entrants we've seen are small operators who have somehow managed to get big-time concessions from the Government by making even bigger promises regarding prices. Ceylon Petroleum Corporation (CPC) produces about 10% of the country's LPG requirement as a by-product of their refining process. The balance 90% has to be imported from the international market at current US\$ prices. In September 2001, Laugfs Lanka Gas managed to enter into a 3-year Agreement with CPC for obtaining all the LPG produced by CPC at a highly subsidised price in Rupees, without going through the mandatory government tender procedure. In return, Laugfs contractually agreed to supply domestic LPG at a price at least Rs. 100 below the retail price of Shell Gas, and not to sell any of CPC's LPG as auto gas (which had a very high profit margin). Laugfs broke both these terms of the Agreement, but continued to get CPC's LPG at subsidised prices! Strangely enough, instead of terminating the Agreement for non-compliance (as stipulated in the Agreement), in January 2002, CPC signed a supplementary Memorandum of Understanding with Laugfs Gas which actually mentioned that it was being originated due to the non compliance and breach of certain conditions incorporated in the earlier Agreement by Laugfs!

Stranger still, CPC recently decided to give Laugfs a five-year monopoly to purchase CPC's entire output of LPG, again without calling for tenders. CPC would sell all its LPG to Laugfs at the Rupee equivalent of the Saudi Aramco FOB price, without charging anything extra for the freight, insur-



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ance and handling payments needed to bring the LPG to Colombo. Why is CPC, in spite of its huge accumulated losses, giving this subsidy to a private company, which has broken former agreements made with CPC, when other competitors would have to import all their requirements from the international market and pay the additional cost of bringing the LPG here?

Today, Laugfs are selling domestic LPG at the same price as Shell. Their price was even Rs. 67 higher than Shell for a one week period at the beginning of February. Why is the Fair Trading Commission (FTC) not investigating the latest price increase by Laugfs, considering that their investment has been minimal and that they receive about 25-50% of their LPG requirements from the CPC at a subsidised price? Why has the FTC ruled that Shell Gas should refund to the consumer (depositor) the entirety of the cylinder deposit at the time the cylinder is surrendered, while Laugfs are following the same partial deposit refund policy as Shell Gas? Why is Laugfs, a private company, continuing to receive preferential treatment from the Government at the expense of LPG consumers?

In the latest twist to an already bizarre tale of irregularity and non-transparency, the Government has had a change of heart and is asking CPC to explore marketing LPG directly at a lower price. From over one million families using LPG all over Sri Lanka, only about 10% will be able to get LPG from CPC at subsidised prices. Will this 10% be chosen in a fair and transparent manner to benefit the poorer people, especially those living in rural areas? Won't the taxpayers be foot-

ing the bill eventually for such a price subsidy from CPC in view of CPC's huge accumulated losses?

Anyone who follows developments in our LPG industry will see that the bizarre situations and grave procedural anomalies summarised above have created anarchy in the industry. CPC supplying their LPG to a private company at subsidised prices with a total disregard for government tender procedures, and the Ministry of Commerce and Consumer Affairs spending taxpayers' money to promote a private company, are two suspicious situations that reek of malpractice and demand immediate investigation. Such glaring irregularities involving government ministries and organisations show poor governance and seriously undermine our efforts to attract foreign and local investment. Besides, who would want to invest in a country where the Government itself is encouraging the violation of trademarks and intellectual property rights?

Clearly, the LPG playing field is far from even and worse than a jungle. It is hard to understand why the Commerce and Consumer Affairs Ministry is trying to bring in more players into the LPG market without appointing a Regulator. The controlled growth of our LPG industry requires that all competitors operate under the watchful eye of a competent Regulator, play by the same rules, and make the infrastructure investments needed to meet strict safety standards. Without such a competent Regulator, bringing LPG safely to more consumers all over Sri Lanka at a fair price will remain just a pipedream.