

February 2002

Marketing gas and electricity

Summary

Doorstep, telephone, and face to face sales in public places are now well established as the primary means by which suppliers of gas, electricity and other utilities gain customers. The process of gaining customers from other suppliers goes to the heart of the competitive process that benefits customers by driving prices down.

Surveys continue to show that most people find direct sales informative and effective. Research conducted on Ofgem's behalf by MORI found that 88% of customers who had switched found the process 'easy'. However, not all consumers' experiences are positive. Although relating to only a small proportion of sales contacts, there remain instances of sales agents behaving inappropriately towards customers; for example, giving misleading information and using high pressure sales techniques. There have also been instances of sales agents acting fraudulently. In order to reduce the frequency and seriousness of such incidents, OFFER and Ofgas introduced licence conditions for domestic suppliers to regulate their marketing activities. The present conditions require suppliers to implement procedures for: staff selection and training; sales agent identification; audit of doorstep and telephone sales, and those in public places; cancelling contracts when requested by the customer; maintaining contact if there is a delay; and complaints.

The conditions also require (since they were amended in January 2001) suppliers to: ensure individuals understand that they have entered into a contract; send out terms and conditions following telephone sales; provide appropriately for on-going management of sales agents; and provide the same safeguards and audit procedures for sales conducted in public places as for doorstep and telephone sales;

The licence conditions are due to expire on 31 March 2002.

Ofgem proposes that the conditions should remain in force for a further 2 years (expiring in March 2004). Ofgem is also consulting on whether and, if so, how the marketing licence conditions should be modified.

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1. Introduction

Purpose of this document

- 1.1 The existing licence conditions governing the marketing of gas and electricity to domestic customers are due to expire on 31 March 2002. The objectives of the licence conditions are to protect customers from inappropriate sales activity, to promote public confidence in the competitive process and to support suppliers' own management of that. The purpose of this document is to set out the current position, to consult on proposals to keep the marketing licence conditions in force and to seek views and suggestions for their modification.

Background

- 1.2 The present marketing conditions in the gas and electricity supply licences are almost identical. They were introduced to supplement general consumer protection legislation and to provide Ofgem with powers to protect customers from inappropriate marketing behaviour by suppliers and their agents.
- 1.3 Following a consultation in January 2000, the Ofgem notified suppliers on 15 March 2000 that the licence conditions covering marketing activity would remain in force until 31 March 2002.
- 1.4 In January 2001 the licence requirements were amended to include sales in public places and to ensure that suppliers have in place adequate systems for managing the conduct of staff and agents selling on their behalf.

Structure of the document

- 1.5 The chapters in this consultation document are structured as follows: Chapter 2 outlines the regulatory framework to continuation and modification of the licence conditions. Chapter 3 sets out the current position under the marketing licence conditions and proposes that they should remain in force beyond 31 March 2002. Chapter 4 sets out current issues and seeks views on modifying the marketing licence conditions. Chapter 5 provides information on other areas of consumer protection affecting suppliers and agents who market gas and electricity. Chapter 6 contains a summary and proposals.

Rationale

- 1.6 Before deciding whether to extend the marketing licence condition, Ofgem is required to consult those licensed suppliers, energywatch, and such other persons or bodies that are likely to be affected. This consultation fulfils that purpose.
- 1.7 There has been considerable interest in the way that Ofgem regulates suppliers' marketing activities. Ofgem is now also seeking views on what overall regulatory action would be most appropriate and whether the marketing licence conditions could be made more effective. Comments received in response to this consultation will inform Ofgem's future regulatory policy in that regard.

Comments invited

- 1.8 Comments are invited on the issues raised in this document and in particular Ofgem's proposals. Replies should be received by **13 March 2002**. Responses should be sent to:

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It is open to respondents to mark all or part of their responses as confidential. However, we would prefer it if, as far as possible, responses were provided in a form that can be placed in the Ofgem library. If you have any queries concerning this document Paul Beard (0207 901 7015) would be pleased to help.

2. Regulatory Framework

- 2.1 This chapter sets out the regulatory framework for the licence conditions covering marketing for gas and electricity suppliers.
- 2.2 The Electricity Act 1989 and the Gas Act 1986, as amended by the Utilities Act 2000, place responsibility on the Gas and Electricity Markets Authority for protecting the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the supply of electricity and/or gas. The Authority is also required to have regard to the interests of individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas.
- 2.3 The Utilities Act 2000 sets out the framework for amendments to standard conditions contained in gas and electricity supply licences. Before standard licence conditions can be modified collectively, further secondary legislation is required.
- 2.4 However, paragraph 12 of condition 48 of the supply licences (“Marketing of gas/electricity to domestic customers”) sets out the process that the Authority may follow, should they wish simply to extend the provision to a “new termination date” not more than two years after the original one. This consultation forms the first part of that process. Having regard to all of the replies to this consultation, the Authority will publish its decision in accordance with sub-paragraphs 12(a)(i) and 12(a)(ii) of that licence condition. (NOTE: see appendices 2 and 3 for the full text of the conditions, and appendix 4 for a draft text for the proposed amended section of the renewed marketing conditions. See also Chapter 5 for details of general consumer protection legislation applying to the domestic energy markets.)

3. Extending the marketing licence conditions beyond March 2002

Background

- 3.1 Since the introduction of competition, the gas and electricity industry has made extensive use of doorstep sales agents in marketing to gas and electricity customers. Most suppliers active in the gas and electricity markets report that doorstep selling or other forms of direct sales (such as sales stands in shopping centres and other public places) provide the most effective means of attracting customers to switch suppliers. The majority of licensed suppliers active in the domestic market have large field sales forces. Often these are not employees of the licensee but employed (or engaged on a self-employed basis) by specialist agencies contracted to work on behalf of the licensee. Research commissioned by Ofgem and undertaken by MORI in 2001 showed that over 60% of the customer sample reported having had some contact with new electricity or gas suppliers through doorstep selling. This suggests that up to 15 million households have had one or more doorstep sales visits.
- 3.2 The vast majority of customers who have been in contact with suppliers have made no complaint. 88% of those who said that they had switched suppliers also said that they had found the process easy. That is not to say that there have been no problems. For example, there have been instances of individual salesmen failing to identify the actual customer responsible for paying gas or electricity bills in a particular household. There have also been instances of sales agents applying undue pressure, using misrepresentation to obtain signatures on contracts and, having obtained details of a customer or property, forging/falsifying customer signatures. Anecdotal evidence suggests that a very small number of individuals and criminal groups have used these techniques systematically.
- 3.3 One source of information about dissatisfaction with suppliers' marketing activities is the *energywatch* complaints database, which shows the number of complaints made to *energywatch* (and previously to Ofgem as well) about direct selling (i.e. those complaints where the customers' attempts to resolve any

concern directly with the supplier have failed). The latest data shows that the average number of direct selling complaints across the whole industry, for the period October 1999 to October 2001, ranged from month to month between 1.42 and 0.51 per thousand customers transferred between suppliers (see Appendix 1). There has been no significant downward trend in these complaints during the last year, although the overall rate of complaints is lower than when the marketing licence condition was first introduced.

- 3.4 Direct marketing complaints have also been the subject of written and oral questions raised by MPs. There has been much interest in these issues from the national and local press.
- 3.5 When Ofgem last consulted on the extension of the then marketing licence conditions, all consumer groups that responded wanted the licence condition to be extended. Many expressed the view that it would be premature to lift the restrictions even in 2002. They suggested that greater sanctions should be used against offending suppliers and their agents.

Extension of the licence condition

- 3.6 The proposal is that standard condition 48 of the gas and electricity supply licences remain in force until 31 March 2004. This would become "the new termination date", with provision to review and further extend as before.

Ofgem's view

- 3.7 Doorstep selling appears to be the most widespread and effective method of communicating with customers. However, the problems reported in relation to direct marketing activities by suppliers and their agents cannot be ignored. Concern about misselling has not yet reduced to the point where general consumer protection legislation and industry self-regulation might satisfactorily be relied on to maintain public confidence in the home energy market.
- 3.8 Furthermore, the issue is becoming more complicated as utility suppliers begin to offer telecommunication and other services as discounted packages; the implications of such cross-selling have yet to emerge fully and it will be necessary for Ofgem, other utility regulators and the Office of Fair Trading to

work towards achieving an appropriate balance of regulation across the whole sector.

- 3.9 Competition within the supply industry is now well established, partly as a result of supplier investment in direct selling. That has brought considerable benefits for consumers across the whole of the gas and electricity markets. However, there is a difference between positive selling and inappropriately aggressive selling. Inappropriate selling activity has potential to harm the market and to reverse some of the benefits that have been achieved.
- 3.10 Ofgem suggests that the marketing licence conditions should remain in force until at least March 2004, before which a further review should take place.

4 Enhancements to the existing conditions

- 4.1 In addition to consulting on whether standard supply licence condition 48 should remain in force for a further two years, Ofgem will consider whether the condition should be amended to protect the public more appropriately from unhelpful direct marketing activity and from fraudulent sales agents.

Customer understanding - misleading information

- 4.2 One common cause of complaint has been the misleading of customers by sales agents into signing a contract for the supply of gas, electricity, or both, on the pretext that they were not signing a contract but for information only. The high profile of this particular problem could undermine public confidence in the market and thus, indirectly, reduce the benefits brought through competition between suppliers. In principle existing consumer protection legislation can address these concerns, but Trading Standards Officers who have a responsibility for enforcement of the relevant legislation have limited resources. The marketing licence conditions were made more effective in January 2001 by placing requirements on suppliers to audit doorstep and telephone sales, and those in public places (such as shopping centres and motorway service stations – see paragraphs 3 and 4 of standard condition 48). When it was put in place, it appeared that this measure would be sufficient to deter sales agents from misleading potential customers, because inappropriate activity should have been identified at the audit stage. In practice, suppliers would seem to have interpreted and implemented the audit requirement in a variety of different ways, some more effective than others. Ofgem proposes to conduct research into this issue during the coming year.

Fraud and forgery

- 4.3 There have also been some reported cases of agents having been convicted for offences of fraud and/or forgery. Ofgem believes that this type of behaviour is less common than that identified at paragraph 4.2. Those who engage in such criminal activities remain liable to prosecution. Ofgem proposes to work more closely with the Office of Fair Trading, Local Authority Trading Standards

Officers and the Police, to facilitate better enforcement of existing measures which should, properly enforced, maintain an adequate deterrent.

Management

- 4.4 The present licence conditions already deal with the selection and training of sales staff, and require that training must be such that any relevant advice given by the salesman is not misleading. Whilst the eradication of all examples of poor selling practices from the industry is impractical, our experience and that of suppliers strongly suggests that effective management of the sales force is critical to the successful implementation of good quality sales. One option would be to add a condition that each supplier should have a named officer responsible for compliance with the marketing licence condition and consumer protection legislation.

Consultation

- 4.5 Ofgem is keen to combat marketing problems in the most efficient and effective manner. Potential means include: voluntary action by suppliers; use of powers under general consumer protection legislation; extending work with the OFT, Police and Trading Standards Officers; and amending the marketing licence condition. Ofgem is now seeking views on what overall regulatory action might be most effective, and particularly the question of whether there are ways in which the marketing licence conditions could be made more effective.

5 General consumer protection legislation

- 5.1 This chapter looks at consumer protection legislation relating to marketing, with which all suppliers in the gas and electricity markets need to comply. Where relevant, Ofgem outlines its view on the impact of the legislation in relation to the current marketing licence conditions and for the future regulation of marketing in the gas and electricity markets.

The Stop Now Order (EC Directive) Regulations 2001

- 5.2 Ofgem has the power (concurrent with the Office of Fair Trading) under these Regulations to deal with breaches of certain consumer protection legislation which implements European Community measures. Ofgem may try to achieve cessation of an infringement. Should that cessation not be achieved, then Ofgem may apply to the Court for a Stop Now Order. Alternatively, Ofgem may seek an appropriate undertaking from the supplier. Relevant consumer protection legislation includes: The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987; The Consumer Protection (Distance Selling) Regulations 2000; The Trade Descriptions Act 1968; The Control of Misleading Advertising Regulations 1988; and The Unfair Terms in Consumer Contracts Regulations 1999.

The Trade Descriptions Act

- 5.3 The Trade Descriptions Act 1968 (as amended) makes it an offence for suppliers to make a false statement, knowingly or recklessly, that is material to the provision of services, the nature of those services, or the time or manner in which those services shall be provided. Charges may be brought against agents, agencies or suppliers, and/or individual officers/staff of those bodies. The Act is usually enforced by Trading Standards Departments and/or the Office of Fair Trading. Ofgem could refer appropriate cases to those bodies for consideration.

The Consumer Protection (Distance Selling) Regulations 2000

- 5.4 The Consumer Protection (Distance Selling) Regulations 2000 cover all forms of distance selling, including by telephone, fax, e-mail and through the Internet. They apply regardless of whether the supplier or the consumer initiated the

contact. The consumer must be informed about the supplier's name and address, a description of the goods/services to be provided, the price including all taxes, arrangements for payment and performance, and the right to a cooling off period (7 days) during which the consumer may cancel the contract for any reason before the contract is completed. Ofgem does not have the power to enforce the Regulations directly, but may refer cases to either the Office of Fair Trading, or to Trading Standards Departments, who do. Alternatively, Ofgem may deal with breaches indirectly using the Stop Now Orders (EC Directive) Regulations.

The Unfair Terms in Consumer Contract Regulations

- 5.5 Ofgem also has jurisdiction concurrent with the OFT to investigate complaints under the Unfair Terms in Consumer Contract Regulations and does not believe the inclusion of further measures in the licence regarding matters covered by those Regulations to be necessary.

Ofgem's view

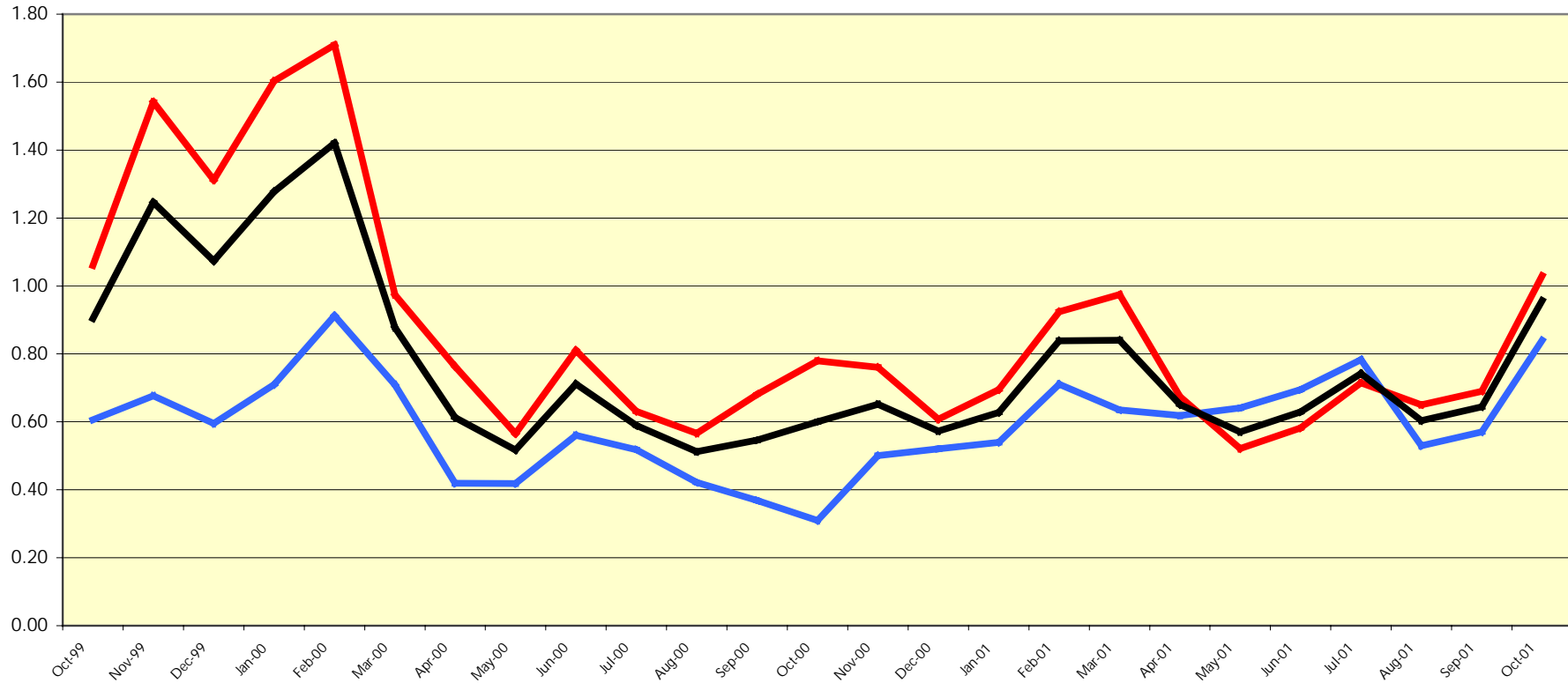
- 5.6 Ofgem will keep the use of both industry specific and general consumer protection measures under review in deciding what action might be most appropriate to tackle misselling. Such regulatory tools will be used as a proportionate response when significant failings have been identified. Ofgem's action will always be targeted at securing improved performance by suppliers in marketing. When the Department of Trade and Industry implement the secondary legislation necessary for Ofgem to exercise its powers to impose financial penalties, their use will be considered on the same basis. On several occasions Ofgem has decided that the most appropriate action has been to seek undertakings from suppliers that they will make material improvements in their marketing performance, and to date this has proved a successful approach in terms of securing improvements.

6 Conclusions and way forward

- 6.1 Condition 48(12) in each of the supply licences provides for the Authority to decide that the marketing licence conditions should continue in force, where it 'considers that the development of competition is such as to require the continuation of any part of the condition'. Ofgem believes that competition in the gas and electricity supply markets is now well established and bringing benefits to all customers in terms of price and quality of services provided. However, there is also evidence that the expected effect of a more mature market on suppliers' marketing activities has yet to fully be seen. For that reason, Ofgem proposes that the conditions should remain in force for a further two years.
- 6.2 Details on how to respond are set out in Chapter 1.
- 6.3 The Authority will consider responses to this consultation and decide whether the marketing conditions should be extended beyond March 2002. If so, the Authority will issue a notice as set out in the licences. The Authority will also consider whether the marketing licence conditions should be modified. Any modifications will be proposed in accordance with the procedure set out in the Gas Act and the Electricity Act as amended and relevant subsidiary legislation.

Appendix 1

Direct selling complaints per thousand transfers



| | Oct-99 | Nov-99 | Dec-99 | Jan-00 | Feb-00 | Mar-00 | Apr-00 | May-00 | Jun-00 | Jul-00 | Aug-00 | Sep-00 | Oct-00 | Nov-00 | Dec-00 | Jan-01 | Feb-01 | Mar-01 | Apr-01 | May-01 | Jun-01 | Jul-01 | Aug-01 | Sep-01 | Oct-01 |
|-------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Gas | 0.61 | 0.68 | 0.60 | 0.71 | 0.91 | 0.71 | 0.42 | 0.42 | 0.56 | 0.52 | 0.42 | 0.37 | 0.31 | 0.50 | 0.52 | 0.54 | 0.71 | 0.63 | 0.62 | 0.64 | 0.70 | 0.78 | 0.53 | 0.57 | 0.84 |
| Electricity | 1.06 | 1.54 | 1.31 | 1.60 | 1.71 | 0.97 | 0.76 | 0.57 | 0.81 | 0.63 | 0.57 | 0.68 | 0.78 | 0.76 | 0.61 | 0.69 | 0.92 | 0.97 | 0.67 | 0.52 | 0.58 | 0.72 | 0.65 | 0.69 | 1.03 |
| Total | 0.90 | 1.25 | 1.07 | 1.28 | 1.42 | 0.88 | 0.61 | 0.52 | 0.71 | 0.59 | 0.51 | 0.55 | 0.60 | 0.65 | 0.57 | 0.63 | 0.84 | 0.84 | 0.65 | 0.57 | 0.63 | 0.74 | 0.60 | 0.64 | 0.96 |

Gas Electricity Total

Appendix 2

Condition 48. Marketing of Gas to Domestic Customers

1. This condition applies to the marketing activities of the licensee in respect of the supply or the proposed supply of gas conveyed through pipes to the premises of domestic customers.

2. The licensee shall–
 - (a) set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve oral communication with domestic customers for the purposes of the marketing activities of the licensee;
 - (b) take all reasonable steps to ensure that each and every such person is trained so as to have a sufficient understanding of–
 - (i) the arrangements for competition in domestic gas supply in Great Britain; and
 - (ii) the prices charged by, and the other terms of supply of, the licensee, in particular methods of payment, duration of contracts and termination fees;such that any relevant advice given by them to domestic customers is not misleading;
 - (c) take all reasonable steps to ensure that–
 - (i) a domestic customer may readily identify the licensee whenever a representative of the licensee contacts the customer;
 - (ii) a domestic customer will readily understand that he or she has entered into a domestic supply contract;
 - (iii) any unsolicited contact made on behalf of the licensee with any customer takes place at a reasonable time; and

- (d) take all reasonable steps to ensure that any agents and sub-contractors of the licensee set up equivalent procedures and take equivalent steps to those set out in sub-paragraphs (a), (b) and (c).
3. Paragraph 4 shall apply where a domestic supply contract has been signed or otherwise entered into by a domestic customer in the course of -
- (a) a visit by a representative of the licensee to the premises of a domestic customer;
 - (b) a conversation in a place to which the public have access between a representative of the licensee and domestic customer; or
 - (c) a telephone conversation between a representative of the licensee and a domestic customer.
4. Where this paragraph applies, the licensee shall, through a person other than a representative engaged in activities leading to the entering into domestic supply contracts between the licensee and any domestic customer, and not less than 24 hours nor more than 14 days after the making of the domestic supply contract in question –
- (a) use its reasonable endeavours to contact the domestic customer by telephone or by letter seeking his confirmation-
 - (i) that he understands that he has entered into a domestic supply contract;
 - (ii) that he is content to have entered into that contract; and
 - (iii) that he is content with the way in which the sale was conducted;
 - (b) if in the course of such telephone contact, or within a reasonable period of sending such a letter, the customer indicates that he is not content to have entered into the domestic supply contract and wishes to terminate it, take all reasonable steps to ensure that the domestic

supply contract is terminated and, where reasonably practicable, that any proposed supplier transfer in relation to the domestic supply contract is not put into effect; and

- (c) if the response of the domestic customer, alone or when considered with the responses of other domestic customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the licensee or its sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.
-
- 5. Where gas is not to be supplied before the expiry of 60 days from the date on which the domestic supply contract was signed or otherwise entered into by the domestic customer, the licensee shall take reasonable steps during the period from that date until commencement of supply, to keep the domestic customer informed that he has entered into a domestic supply contract with the licensee.
 - 6. The procedures to be established by the licensee for dealing with complaints by domestic customers under standard condition 39 (Complaint Handling Procedure) shall provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under this condition.
 - 7. The licensee shall keep a record of its compliance with its obligations under this condition including-
 - (a) the contacting of domestic customers in pursuance of subparagraph 4(a) and the response of customers to such contact;

- (b) the termination of domestic supply contracts in pursuance of sub-paragraph 4(b); and
 - (c) compensation paid in relation to failures under this condition under procedures mentioned in paragraph 6.
- 8. Except as the Authority may determine for the purposes of this condition generally, the licensee shall, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year, submit to the Authority and to the Consumer Council a report dealing with the matters mentioned in paragraph 7 in that period, and shall:
 - (a) publish the report so submitted in such manner as will in the reasonable opinion of the licensee secure adequate publicity for it; and
 - (b) send a copy of it free of charge to any person requesting one,except that, in performing its obligations under sub-paragraphs (a) and (b), the licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.
- 9. Reports in pursuance of paragraph 8 shall be presented, in so far as is reasonably practicable, in a standard format designated by the Authority for the purposes of this condition generally.
- 10. Except as the Authority may approve-
 - (a) for the purpose of protecting the interests of any domestic customer who, prior to 27 January 1998, may have made a payment in advance with a view to arranging a supply of gas; or

- (b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,

the licensee shall not enter into any commercial relations connected with supply of gas to any domestic customer with any person who has sought, after 27 January 1998, payment in advance (other than one governed by standard condition 45 (Security Deposits)) from any such domestic customer with a view to arranging a supply of gas and shall not enter into any contract for the supply of gas to any such domestic customer made through the agency (either for the licensee or for any domestic customer) of such a person.

11. The licensee shall take all reasonable steps:

- (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs 2 to 9 of this condition; and
- (b) to ensure that any agents and sub-contractors of the licensee take steps equivalent to those arrangements.

12. This condition shall cease to have effect on a date (“the termination date”) which shall be 31st March 2002 provided that:

- (a) if the Authority, after consultation with all gas suppliers whose licences have this condition in effect and the Consumer Council, gives notice for the purposes of this condition generally:
 - (i) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and
 - (ii) by sending a copy of the notice to every such gas supplier, to the Secretary of State and to the Consumer Council,

that it considers that the development of competition is such as to require the continuation of any part of this condition until such date not later than two years from the termination date as may be specified in the notice (the “new termination date”), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

- (b) notice under sub-paragraph (a) may be given on more than one occasion.

13. In this condition, except where the context otherwise requires:

“marketing activities”

means any activity of the licensee directed at or incidental to the identification of and communication with domestic customers supplied or to be supplied with gas by the licensee and includes entering into domestic supply contracts with domestic customers;

“representative”

in relation to the licensee means any person directly or indirectly authorised to represent the licensee in its dealings with domestic customers.

Appendix 3

Condition 48. Marketing of Electricity to Domestic Customers

1. This condition applies to the marketing activities of the licensee in respect of the supply or the proposed supply of electricity to domestic premises.
2. The licensee shall:
 - (a) set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve oral communication with domestic customers for the purposes of the marketing activities of the licensee;
 - (b) take all reasonable steps to ensure that each such person is trained so as to have a sufficient understanding of:
 - (i) the arrangements for competition in electricity supply in Great Britain; and
 - (ii) the principal terms of domestic supply contracts made available by the licensee;such that any relevant advice given by him to domestic customers is not misleading;
 - (c) take all reasonable steps to ensure that:
 - (i) a domestic customer may readily identify the licensee whenever he is contacted by a representative of the licensee;
 - (ii) a domestic customer will readily understand that he has entered into a domestic supply contract; and

- (iii) any unsolicited contact made on behalf of the licensee with any domestic customer takes place at a reasonable time; and
 - (d) take all reasonable steps to ensure that any agents and sub-contractors of the licensee set up equivalent procedures and take equivalent steps to those set out at sub-paragraphs (a), (b) and (c).
- 3. Paragraph 4 shall apply where a domestic supply contract has been entered into by a domestic customer in the course of –
 - (a) a visit to that customer's premises by a representative of the licensee;
 - (b) a conversation in a place to which the public have access between a representative of the licensee and a domestic customer; or
 - (c) a telephone conversation between a domestic customer and a representative of the licensee.
- 4. Where this paragraph applies, the licensee shall, through a representative who is not engaged in activities leading to the entering into domestic supply contracts between the licensee and domestic customers, and not less than 24 hours nor more than 14 days after the date of the domestic supply contract in question:
 - (a) use its reasonable endeavours to contact the domestic customer by telephone or by letter seeking his confirmation that:
 - (i) he understands that he has entered into a domestic supply contract;
 - (ii) he is content to have entered into that domestic supply contract; and
 - (iii) he is content with the way in which the marketing activities of the licensee were conducted;

- (b) if in the course of such telephone contact, or within a reasonable period of sending such a letter, the domestic customer indicates that he is not content to have entered into the domestic supply contract and wishes to terminate it, take all reasonable steps to ensure that the domestic supply contract is terminated and, where reasonably practicable, that the licensee does not commence a supply to the customer; and
 - (c) if the response of the domestic customer, alone or when considered with the responses of other customers, suggests weaknesses in the methods, systems or personnel employed or engaged by the licensee or its agents or sub-contractors for the purpose of its marketing activities, ensure that all reasonable steps to remedy the matter are taken.
- 5. Where, by virtue of any domestic supply contract, electricity is not to be supplied to premises before the expiry of 60 days after the date of the domestic supply contract, the licensee shall take reasonable steps during the period after that date and prior to the commencement of supply to keep the domestic customer informed that he has entered into a domestic supply contract with the licensee.
- 6. The complaint handling procedures to be established by the licensee in accordance with standard condition 39 (Complaint Handling Procedure) shall provide in appropriate cases for the payment of compensation to domestic customers adversely affected by the failure of the licensee to perform its obligations under this condition.
- 7. The licensee shall keep a record of its compliance with its obligations under this condition, including:
 - (a) the contacting of domestic customers in pursuance of sub-paragraph 4(a) and the response of customers to such contact;
 - (b) the termination of contracts in pursuance of sub-paragraph 4(b); and

(c) compensation paid in pursuance of paragraph 6.

8. Except as the Authority may determine for the purposes of this condition generally, as soon as reasonably practicable after the end of each period of three months ending on 31 March, 30 June, 30 September and 31 December in every year, the licensee shall submit to the Authority and to the Consumer Council a report dealing with the matters specified in paragraph 7 in that period and shall:

(a) publish the report so submitted in such manner as will in the opinion of the licensee secure adequate publicity for it; and

(b) send a copy of it free of charge to any person requesting one,

except that, in performing its obligations under sub-paragraphs (a) and (b), the licensee shall exclude from the report such information as appears to it to be necessary or expedient to ensure that, save where they consent, individual customers referred to therein cannot readily be identified.

9. Reports in pursuance of paragraph 8 shall be presented by the licensee, in so far as is reasonably practicable, in a standard format submitted to and approved by the Authority for the purposes of this condition.

10. Except as the Authority may approve-

(a) for the purpose of protecting the interests of any domestic customer who, prior to 21 July 1998, may have made a payment in advance with a view to arranging a supply of electricity; or

(b) where any payment in advance is wholly or mainly for services other than arranging the supply of energy,

the licensee shall not enter into any commercial relations connected with the supply of electricity to domestic premises with any person who has sought,

after 21 July 1998, payment in advance (other than one governed by standard condition 45 (Security Deposits)) from any domestic customer with a view to arranging a supply of electricity, and the licensee shall not enter into a domestic supply contract for the supply of electricity to any such customer made through the agency (either for the licensee or for any customer) of such a person.

11. The licensee shall take all reasonable steps:
 - (a) to establish management arrangements that facilitate the licensee in meeting its obligations under paragraphs 2 to 9 of this condition; and
 - (b) to ensure that any agents and sub-contractors of the licensee take steps equivalent to those arrangements.

12. This condition shall cease to have effect on a date (the “termination date”) which shall be 31 March 2002, provided that:
 - (a) if the Authority, after consultation with the licensee and all other licensed electricity suppliers in whose supply licence the standard conditions in Section C have effect, the Consumer Council and such other persons or bodies as in the opinion of the Authority are representative of those likely to be affected, gives notice for the purposes of this condition generally:
 - (i) by publishing the notice in such a manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (ii) by sending a copy of the notice to all such licensed suppliers, to the Secretary of State and to the Consumer Council,

that the Authority considers that the development of competition in electricity supply is such as to require the

continuation of any part of this condition until such date - not later than two years from the termination date - as may be specified in the notice (the “new termination date”), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

- (b) notice under sub-paragraph (a) may be given on more than one occasion.

13. In this condition:

“marketing activities”

means any activities of the licensee directed at or incidental to the identification of and communication with domestic customers supplied or to be supplied with electricity by the licensee, and includes entering into domestic supply contracts with such customers.

“representative”

in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with customers.

Appendix 4

Condition 48(12) of the Electricity Supply Licence as it would be amended by the proposal that the conditions should remain in force until 31 March 2004

12. This condition shall cease to have effect on a date (the "termination date") which shall be 31 March 2004, provided that:

(a) if the Authority, after consultation with the licensee and all other licensed electricity suppliers in whose supply licence the standard conditions in Section C have effect, the Consumer Council and such other persons or bodies as in the opinion of the Authority are representative of those likely to be affected, gives notice for the purposes of this condition generally:

(i) by publishing the notice in such a manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(ii) by sending a copy of the notice to all such licensed suppliers, to the Secretary of State and to the Consumer Council,

that the Authority considers that the development of competition in electricity supply is such as to require the continuation of any part of this condition until such date - not later than two years from the termination date - as may be specified in the notice (the "new termination date"), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

(c) notice under sub-paragraph (a) may be given on more than one occasion.

Condition 48(12) of the Gas Suppliers Licence as it would be amended by the proposal that the conditions should remain in force until 31 March 2004

12. This condition shall cease to have effect on a date (the "termination date") which shall be 31 March 2004, provided that:

(a) if the Authority, after consultation with all gas suppliers whose licences have this condition in effect and the Consumer Council gives notice for the purposes of this condition generally:

(i) by publishing the notice in such a manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(ii) by sending a copy of the notice to every such gas supplier, to the Secretary of State and to the Consumer Council,

that it considers that the development of competition in electricity supply is such as to require the continuation of any part of this condition until such date not later than two years from the termination date as may be specified in the notice (the "new termination date"), then such part of this condition as may be specified in the notice shall continue to apply as if for the termination date there were substituted the new termination date; and

(b) notice under sub-paragraph (a) may be given on more than one occasion.