



Strengthening and  
improving the system

Direct Dial: 020 7901 7254  
Email: joanne.tackley@ofgem.gov.uk

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Dear Stakeholder,

**Decision document: Continuing standard licence condition 48 and proposed modifications to that condition**

**Summary**

On 6 January 2006 Ofgem published a consultation document entitled, "The regulation of gas and electricity sales to domestic customers: notice of the proposed modification of standard licence conditions 48 (marketing conditions) and consultation on their continuation" (06/06). That document:

- (a) consulted pursuant to paragraph 12 of standard licence condition 48 (Marketing of Gas to Domestic Customers) of the gas suppliers licence and standard licence condition 48 (Marketing of Electricity to Domestic Customers) of the electricity supply licence (the marketing conditions) and stated that the Authority considers that the development of competition is such as to require the continuation of any part of the marketing conditions for up to a further two year period; and
- (b) gave notice pursuant to section 11A(3) of the Electricity Act 1989 and section 23(3) of the Gas Act 1986 of the modification of the marketing conditions.

**Consultation Responses**

Ofgem received nine responses to the consultation document. Six were from suppliers, including one from the Energy Retail Association, and three were from consumer groups.

*Continuing the marketing conditions*

In the consultation document, Ofgem stated that although there has been a marked reduction in the number of marketing related complaints to energywatch, Ofgem still has concerns about the face to face marketing activity of some suppliers. While this is the case Ofgem believes that some customers will be reluctant to exercise their choice over energy supplier and that some customers and suppliers will look to Ofgem to protect them against unfair face to face marketing activities.

Paragraph 12(a) of the marketing conditions provides that if, after consultation with relevant persons, the Authority considers that the development of competition in gas and/or electricity supply is such as to require the continuation of any part of the marketing conditions, then these shall continue to apply until the new termination date.

The majority of respondents were in favour of continuing the marketing conditions past 31 March 2006. They agreed with Ofgem that whilst complaint levels are low, consumers are still looking to Ofgem to provide protection against unfair face to face marketing activity. The respondents were unable to provide evidence about whether the development of competition in electricity and gas supply requires Ofgem to keep the marketing conditions.

Ofgem recognises that the industry has made significant steps towards preventing unfair marketing activities and that there has been a substantial reduction in the number of complaints about marketing to energywatch. However, as stated in the consultation document, our view is that self-regulation does not yet provide a viable alternative to the marketing conditions. Ofgem may take different view were, for example, the Association of Energy Suppliers Energy Selling Code of Practice (AES Code) to be enhanced to closely meet the requirements of the OFT Consumer Codes Approval Scheme requirements, including by:

- improving transparency over how breaches of the AES Code are investigated and increased reporting on what sanctions have been applied;
- increasing the involvement of consumer bodies in reviewing and revising the AES Code;
- increasing brand awareness of the AES Code and/or taking other measures to deter a signatory from choosing to exit the AES Code rather than comply with it;
- attracting signatories beyond the big six major suppliers.

#### *Modification of the marketing conditions*

The consultation document also proposed reducing the regulatory burden on suppliers by removing the application of the marketing conditions to a telephone conversation between a domestic customer and a representative of the licensee (telesales). The consultation document gave notice pursuant to section 11A(3) of the Electricity Act 1989 and section 23(3) of the Gas Act 1986 of the modification of the marketing conditions. Currently, suppliers must comply with the marketing conditions in respect of telesales and the Consumer Protection (Distance Selling) Regulations 2000 (Distance Selling Regulations).

The modification proposes to remove paragraph 3(c) of the marketing conditions which refers to a telephone conversation between a representative of the licensee and a domestic customer and amending the definition of "marketing activities" in paragraph 13 to exclude telesales.

General consumer law in relation to telesales has been enhanced since the introduction of the marketing conditions. There is now a large overlap between the marketing conditions and the Distance Selling Regulations in that both require that:

- the consumer must be given certain, specified information about the goods or services offered (for example, the supplier's business name and, where the contract requires payment in advance, address; a description of the main characteristics of the goods or services; and information about price). This

information must be provided in a clear and understandable manner, in good time prior to the conclusion of the contract;

- the supplier must provide to the consumer written confirmation of the information referred to above; the confirmation must also include the information on the conditions and procedures relating to the exercise of the right to cancel the contract; and
- the consumer has a cooling off period during which he has the unconditional right to cancel the contract.

The effect of the modification of the marketing conditions would be to reduce the electricity and gas telesales protection to the level currently received in relation to other products to which the Distance Selling Regulations apply.

The five suppliers who responded, together with the ERA, welcomed and supported the proposal believing that the Distance Selling Regulations provide adequate protection. The three consumer groups were opposed to the removal of coverage for telesales; the main reason they gave for their opposition to the proposal was that the Distance Selling Regulations do not provide as high a level of customer protection as the existing marketing conditions.

Under sections 23(7)(c) and 23(10) of the Gas Act 1986 and sections 11A(6)(c) and 11A(8) of the Electricity Act 1989, Ofgem may make modifications to standard licence conditions (even if there are objections from suppliers) where it is satisfied that:

- the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
- the modifications would remove or reduce the burden without removing any necessary protection; and
- the modifications are such that no holder of a licence of the type in question would be unduly disadvantaged in competing with the other holders of such licences.

Ofgem considers that these tests are met. Telesales is an area that is over-regulated due to the presence of both sector specific regulations and the Distance Selling Regulations. Suppliers currently bear the risk that both the marketing conditions in respect of telesales and the Distance Selling Regulations could be enforced against a non-compliant licence holder. By removing the application of the marketing conditions to telesales, Ofgem will be reducing the burden on suppliers without removing any necessary protection to consumers. This may assist the development of competition.

### **Authority's decision**

#### *Continuing the marketing conditions*

Having carefully considered the responses, the Authority considers that the development of competition in gas and electricity supply requires the extension of the marketing conditions for a further two year period ending on 31 March 2008 (or to such earlier date that the Authority may direct). The Authority may make such a direction if it considers that competition has developed in such a way that the marketing conditions are no longer required.

The marketing conditions will be continued on and from 31 March 2006.

*Modification of the marketing conditions*

The Authority has decided to remove the application of the marketing conditions to telesales by removing paragraph 3(c) of the marketing conditions and amending the definition of "marketing activities" in paragraph 13 to exclude telesales. Paragraph 3(c) refers to a telephone conversation between a representative of the licensee and a domestic customer.

The modification will have effect on and from 31 March 2006, immediately after the marketing conditions have been continued.

Ofgem proposes to keep the development of competition for the purpose of the marketing conditions and relevant legislative developments under review.

Yours faithfully



Joanne Tackley