ACS Response to Ofgem Retail Market Review

ACS (the Association of Convenience Stores- Annex 1) welcomes the opportunity to respond to Ofgem's consultation on the retail market review. ACS represents 33,500 local shops across the UK. The nature of retail, with long operating hours, intrinsic use of refrigeration and other equipment, means that energy costs are a significant burden. The costs of energy are a critical factor in the viability of a convenience store businesses and it is therefore crucial that the non-domestic market operates competitively and that unfair practices are regulated against. We therefore welcome the decision for Ofgem to conduct the Retail Market Review and include non-domestic customers within its scope.

The current situation, where businesses are not offered the same basic protections as domestic consumers, is unfair and unacceptable. Many businesses affected are small and do not therefore have the knowledge, time and resources to effectively manage the negotiations of a complex energy agreements. It is right that retailers are protected by Ofgem and we are glad that this previously neglected area is being looked at in the course of this review.

However the proposals in this review do not go far enough and ACS urges Ofgem to accept all the following recommendations:

- Extend SLC 7A to all businesses and include the following new conditions:
    - Ensure businesses are provided the same protections from backbilling as non-domestic customers by only allowing back-dating for one year
    - Total prohibition of rollover contracts
    - Introduce a thirty day 'cooling off' period for non-domestic consumers
    - Introduce a more effective complaints handling procedure

- Introduce new measures to prevent the excessive use of the objections procedure
- Introduce a new code of practice for TPIs, including recording all phone calls

We also respond to other issues raised in the Retail Market Review.

Strengthening Licence Conditions for the Non-Domestic Sector

<u>Extend SLC 7A</u>

The Energy Probe in 2008 led to new licence conditions being introduced to protect micro-businesses. However the narrow definition of micro-business[1] meant that many businesses affected by the bad practices did not benefit from the new protections. In particular, members encountered difficulties in notifying energy companies that they wished to cancel their contract.

[1] Micro-businesses is defined as: "that employ fewer than ten people (full time equivalent) throughout their business and which have an annual turnover of less than 2 million Euros; or which use less than 200,000 kWh of gas per year or 55,000 kWh of electricity per year. The convenience sector is a staff-intensive industry as it employs a large number of part time staff. Therefore the vast majority of businesses employ more than 10 people, even in very small businesses. Convenience stores' reliance on refrigeration systems can also lead to very small stores having unrepresentively high energy use to their business size. Convenience stores are also high turnover relative to their profits, and their ability to resource specialist support on matters such as energy disputes, because net margins tend to be around 1-2%. Therefore each of the three qualifying criteria for the proposed remedies are not inclusive enough for the diverse nature of many convenience stores.

Case Study A: This independent retailer had a record of a manager at his energy supplier accepting his email termination notice to them shortly after initiating the two year contract (the notice was to terminate on completion). However the company have since effectively refused to accept the validity of the termination, retrospectively changing their standard terms and conditions.

Consequently, the retailer was paying a punitive rate of ca 15p kwh for electricity when he could achieve a rate of ca 10p kwh formally released. This meant the retailer received an invoice for £3,000 which should be more like £750 for his store. While this was still in dispute, he gave his direct debit details to the supplier in order for him to be put on a new tariff, on the agreement that the disputed monies would not be withdrawn from his account. However despite having this agreement confirmed on email, the disputed amount was withdrawn from his account. The energy company said the next course of action was to move the complaint to 'deadlock' but refused to return the disputed monies. He is now considering legal action.

ACS strongly opposed SLC 7A only applying to micro-businesses and we recommend that Ofgem uses this review to extend these to cover all businesses, regardless of size. This would mitigate the need for complex definitions to categorise certain businesses, which can be difficult to understand and can also disproportionately penalise certain sectors.

The protections include ensuring clear communication from energy suppliers and allowing customers to cancel their contracts immediately to prevent being rolled over onto costly tariffs and are basic standards to ensure a fair energy market and we therefore see no reason to not extend them to all customers. Such an action will only strengthen the non-domestic markets.

Back-Billing

While extending SLC 7A to a wider range of businesses is an important first step, there are also more conditions that should be imposed to promote greater compliance and protect the interests of vulnerable business consumers. The most urgent issue to be tackled is back-billing. While back billing is restricted to a one year period in the domestic sectors, businesses can face bills spanning a number of years, demanding significant sums, even in instances where the retailer is clearly not at fault.

Case Study B: Retailer B switched supplier on his forecourt site. He received a call from his previous supplier informing him that they had undercharged him for the previous 4 years and were sending an invoice for approximately £20,000. When the invoice finally arrived it was for £35,000. Disputing the amount, he then received a number of threatening phone calls warning him of impending Court judgements and that the suppliers were about to "wind up" his business. After some further time had elapsed he received court papers from Northampton County Court for the £35,000 and £2,500 worth of interest.

He ended up in mediation with the supplier and while negotiating a lower deal, the final costs of the incident including legal costs still ended up being £35,000. He believes that individuals with less knowledge of the law or English as a second language could well have been intimidated into the original incorrect amount.

Case Study C: Retailer C took over a shop in Norfolk in 2000 and paid energy bills by direct debit to Energy Company A. In 2005 the shop owner received an invoice for £15,000 from Energy Company B, dating back to 2000.

Energy Company B produced a contract signed in 1999 by the previous shop owner's father. However Energy Company A continued to claim that they were the supplier. After 12 months pressure from the shop owner Energy Company A finally carried out an investigation and found that the meter they were supposedly supplying (although live) was not connected to anything in the shop. Then agreed to refund £8460.00 without interest to the shop owner while Energy Company B continued to threaten to shut off the energy supply.

In March 2007 the retailer; who had not paid because the amount was still in dispute and calculated to be much too high (the supplier was charging at the 1999 rates, rather than the far lower rate achieved in the industry in subsequent years), was told that Energy Company B were taking court action to obtain a warrant. The retailer negotiated that a 'good faith' payment of £2000 would halt the court action and give time for the refund from Energy Supplier A to be paid. The £2000 was duly paid but despite this agreement Energy Supplier B went ahead and applied for a warrant in the retailers' absence, meaning he was unable to defend himself. On April 9th he received a letter stating that Energy Company B had obtained a warrant and that unless he paid £15,000 he would be disconnected.

On 11 April the shop owner sent a cheque for £10,000 by registered post. This was received and signed for by Energy Company B at 08:12 a.m on April 12th. At approximately 9.30 a.m on Friday 12th April a team from Energy Company B turned up at the store threatening to cut off the power. Despite acknowledging the receipt of the cheque they stated that a cheque was not acceptable because it would take 10 days to clear. Instead he was forced, under advice from his solicitor, to pay £13,000 on the spot by credit card to ensure that he would not lose his power supply.

In addition to this Energy Company B, through Power Debt (a company of debt collectors), claimed a further £19,000 plus costs and interest. Following many threats and a protracted period of negotiation the retailer was advised by his solicitor not to take the case to court (even though he had a good case) as should he lose it would be likely to cost far more than the money being demanded. The retailer then paid the £19,000 plus £5,000 solicitors costs.

The original mistake was made between the energy suppliers when a new meter was fitted on the shop premises and the old meter was left in situ. Energy Company A continued to charge on the old meter and Energy Company B did not read their meter for 6 years. It is the shop owner who has had to spend significant time and stress, not to mention the financial cost, of dealing with this problem.

Energy Company B have at no stage attempted to talk reasonably to the owner to resolve the problem, instead they have continually used threats, demands and bullyboy tactics (at one stage one of their representatives walked around his shopfloor wearing a large badge proclaiming 'bailiff', in another a letter threatening to bankrupt his business was handed, without an envelope or folding to one of his employees) whilst not replying to his questions

regarding their claims. Nor would they accept the fact that the owner had stated that he had asked Energy Company A to carry out an investigation. Finally when he asked Energy Company B what their complaints procedure was in order to complain about the way he had been treated; he was told in writing, 'there wasn't one'.

As demonstrated in the case studies above retailers are often faced with back-bills for large sums, often through no fault of their own. There needs to be urgent actions to protect retailers from these gross abuses. The repercussions for a business of a bailiff visit or disconnection are so severe retailers often feel that they have no recourse but to pay. Then, if they want to try and address the issue they are faced with costly and lengthy legal battles, the cost and bureaucratic burden of which is just too much for small businesses.

It is clearly the case that when these issues do occur retailers are feeling pressured into paying significant amounts to prevent disconnection, even when the amount is under dispute.

This issue of unfair back billing will become more prominent with the roll out of smart meters and it is critical that Ofgem has protections in place as soon as possible otherwise thousands of businesses will suffer significant harms. In instances where the energy company are at fault back billing should only be permissible for one year. This is currently the case in domestic sector and there is no reason businesses should not also be protected from the fault of the energy companies. This restriction will also drive up the level of engagement and service that the energy companies provide to their business customers, which will benefit the market as a whole.

Cooling Off Period

When on an appropriate tariff, businesses should also benefit from the same thirty day 'cooling off' period that is currently in place for domestic customers. The rationale for introducing this measure for domestic customers, to prevent the possibility of a pressurised sell, is a situation that also manifests itself in the non-domestic market. Retailers, many of who are small traders and who perhaps do not have English as a first language, will also face difficulties when dealing with energy companies over the phone and could end up signing an uncompetitive contract. It is right that in this situation businesses have an opportunity to reconsider their decision. The introduction of a thirty day cooling off period would strengthen the non-domestic market and would reinforce the message that all energy customers have a right to fair negotiations and contracts.

Rollover Contract

During the previous Energy Probe ACS supported the end of roll over contracts. This has been a significant issue for ACS members who find themselves locked into a contract with unjustifiably high terms for long periods as demonstrated by the previous case-studies. Rolling over into a non-negotiated contract can occur through gaps in information, lack of contact between energy companies highlighting the notice periods in which new contracts can be negotiated or by a business being prevented from switching onto a new tariff or supplier.

ACS is aware that even in rollover contacts were prohibited there would still be the issue of the retailer being faced with increased deemed rates. However while this would still be a concern, retailers would not be locked in as they are with rollover contracts and would be

able to resolve the issue quicker. Ending rolling contracts will lead to increased activity and switching therefore making the market more competitive.

Customer Services

A constant source of frustration for business customers is the low quality customer service they receive from their supplier. The poor service and ineffective complaints procedures can mean that retailers struggle to get issues resolved which can lead to being placed on higher tariffs or unable to switch suppliers. There needs to be stronger regulation in place to govern how queries and complaints are dealt with, to minimise the cost and time being placed on retailers. Retailers are often left for hours on the phone and in the end are forced to hang up without the issue being resolved in order to continue with their businesses. Business customers should be provided with an easy to contact named individual, who has full details of their case history, to help reduce the time being spent on the phone.

Another action that needs to be taken is for retailers to be able to request written confirmation of an agreement or payment by email. As seen in the previous case studies, agreements are often reached over the phone only to be reneged on or for the information not to be passed to the debt collecting or disconnection teams. Energy companies often demand information in writing and it is only fair that this minimal burden if reciprocated.

Retailers also are left vulnerable by an ineffective complaints process, where they are left with limited avenues to escalate the issue. Often feedback is of energy suppliers not sharing their complaints process and no action being taken, despite contacting Ofgem. It is clear that an energy ombudsman with a remit to help protect businesses is urgently needed. This current gap in protection is leading to many vulnerable businesses being treated like second class citizens and being left in situations where they feel as if there is no other way to resolve the issue but to pay incorrect bills, unless they attempt lengthy and costly legal battles. The poor level of customer service is preventing the non-domestic market working competitively and Ofgem must act.

Objections Procedure

It is clear from member feedback that the excessive use of objections is causing significant problems.

Case Study D: Retailer D tried to switch energy suppliers, due to poor service from their current supplier. However at the last minute the move did not go ahead, a fact the retailer was not aware of until my new supplier contacted me. They said that my current supplier had raised an objection, although there was no further information. There was no communication from the supplier. When the retailer tried to call and understand what the problem was, they had no record of the name of the previous contact he had been given and one of the retailer's staff spent over 3 hours on the phone to try and resolve the problem.

Commonly objections are raised by the current supplier at the last minute, with no communication to the retailer as to what the problem is either before or after the objections is raised. The retailer is not made aware of any issues by their current supplier and has to investigate the issue, spending significant amount of time calling their current supplier to try and solve the problem.

Retailers should not be in a position where they have to chase pro-actively the issue and incur significant phone costs. The greatest frustration is that even when retailers have contact names when calling the supplier there is no record of this person working there and they are passed around operators who have no idea of the issues, if indeed there is one. If an objection is raised, retailers need to be able to quickly solve the issue with minimum cost and time burdens. The current situation is impacting on the market, making businesses reluctant to switch suppliers.

There is also concern that as the objections procedure can significantly delay the switching, the retailers may come to the end of their contract with their current supplier. This can result in retailers being shifted onto a higher out-of-contract tariff, even though the objection may be through no fault of the retailer.

This is an area where Ofgem need to act in order to ensure suppliers are not abusing their position and placing retailers in a disadvantageous position. ACS would recommend the following conditions are placed on energy suppliers to tackle the problem of excessive objections:

- If there is an objection, the current supplier has to contact the customer (in a form agreed by the customer at the start of the process) and notify them of the problem at least 48 hours before the switch, in order to give an opportunity for any issue to be resolved
- If an objection is raised the customer has to be given a named contact and correct contact number/email with the supplier. This will ensure the solution can be resolved quickly
- While the issue is being resolved, the customer must be kept on the same tariff as they are contracted on
- Ofgem must punish suppliers who make spurious objections

Third Party Intermediaries (TPI)

It is clear that understanding and use of TPI varies throughout the convenience store sector. It is likely that at least some organisations using TPI's may not be aware of the full cost implications involved. This lack of knowledge is concerning and we would therefore support measures that provide greater clarity in this area. It seems sensible that a TPI Code of Practice or accreditation scheme is introduced, to help simplify this already complex area.

ACS members have also expressed the concerns over the volume of calls they receive each day from TPI cold calling, often aggressively. These calls continue even once retailers have signed up for Telephone Preference Service. Retailers would like to see action to curb the volume of these calls.

Case Study E: Retailer E often receive two or three calls each day from companies offering to get me better energy deals. Even when they hang up, the retailer is called back immediately and continued to be pressurised into buying something. The retailer has to answer the phone in case it is a genuine supplier but the sheer numbers of calls drives him up the wall. He has signed up to the TPS but it didn't help.

There needs to be action to regulate these calls. We would be keen for Ofgem to explore further as part of discussions around Code of Practice requirements to record all phone calls from TPI. This will help tackle misspelling as well as unwanted calls.

We also agree that Ofgem should seek to have enforcement powers in this area. It makes sense both from an enforcement and consumer perception, as it will be simpler for businesses to make complaints through the more familiar route of Ofgem.

Other Issues Raised in the Review

Standards of Conduct

ACS agrees that the Standard of Conduct currently in place should be extended to non-domestic consumers. The main purpose of the standards is to ensure that information regarding the service and bills are easy to understand for the consumer. As stated previously, retailers usually have no more skill or resources when dealing with complex energy contracts than domestic customers and it is important that they are also able to make decision based on clear and non-misleading information. Extending this code will help retailers to manage their energy suppliers more effectively, saving cost and strengthening the market. It may even reduce the need for companies to pay third parties to assist them with their energy contracts, as they will be more secure that they understand communications and bills.

Tariff Simplification

The Review does not propose to extend the new tariff simplification measures for non-domestic customers. We recognise the concerns regarding the differences in some non-domestic energy tariffs (particularly with half hourly metering) and agree that these measures would not be suitable for all non-domestic customers. However, many businesses are facing the same problems resulting from complex and higher rate tariffs as domestic customers. These problems may be resolved for businesses if the recommendations to extend of SLC 7A and ban rollover contracts are introduced. We would therefore recommend that Ofgem review the decision whether to include non-domestic contracts in tariff simplification at a later date.

Remote Disconnection

While this is not an issue dealt with in the Retail Market Review, the safeguards that are implemented prior to the roll out of smart meters are crucial for the future strength of the non-domestic market. As this response highlights, there are significant instances where businesses are unfairly treated and there are also barriers to getting any issues resolved quickly and efficiently. It is therefore important with the roll out of smart meters that energy companies are not given the power to remotely disconnect. It is clear that the current practices are not sufficient to ensure no wrongful disconnections occur and energy suppliers should not be entrusted with this responsibility; otherwise thousands of businesses face losing energy supply and possibly their businesses due to no fault of their own. ACS responded to the previous consultation on this issue, a copy of which can be found in Annex B.

If you have any further questions or comments regarding this submission, please contact Jenny Amphlett on 01252 515001 or jenny.amphlett@acs.org.uk

ANNEX 1- THE ASSOCIATION OF CONVENIENCE STORES

ACS is the trade body representing the interests of over 33,500 convenience stores operating in city centres as well as rural and suburban areas. Members include familiar names such as Martin McColl, Spar and Costcutter, as well as independent stores operating under their own fascia. Our members operate small grocers, off-licence or petrol forecourt shops with between 500 and 3,000 square feet of selling space.

If you need any more information on this submission please contact Jenny Amphlett on either jenny.amphlett@acs.org.uk or 01252 515001.

ANNEX 2- ACS RESPONSE TO OFGEN CONSULTATION ON SMART METERS

ACS (the Association of Convenience Stores- Annex 1) welcomes the opportunity to respond to this consultation on strengthening consumer protections in preparation for the roll out of smart meters. While the proposals contained in this consultation do not currently cover the non-domestic sector it does seek views from business representatives.

ACS represents over 33,500 convenience retailers, ranging from independent businesses to national companies. While all these businesses recognise the potential benefit in installing smart meters there are also significant operational concerns, particularly relating to remote disconnection and pre-payment. It is a mistake that Ofgem have only consulted on strengthening protection for the domestic sector and this decision must be reviewed urgently. Many retailers experience a problematic relationship with their energy suppliers and it is important that these problems are understood and addressed, otherwise the introduction of smart meters may jeopardise the stability and security of the energy supply in the sector. Ofgem must use their remit to ensure that small business are protected and must assist the Department for Energy and Climate Change (DECC) in exploring how these measures can be transposed so that businesses of all sizes are protected from the potentially damaging smart meter roll out.

Below are ACS' comments on the key issues covered in the consultation:

Remote Disconnection

While there are clear business benefits to smart metering[2], the ability of energy companies to remotely disconnect or to switch businesses to prepayment remains a significant concern. For a convenience store, which relies on energy to power chillers, ovens and till systems even a temporary cut off can threaten the viability of the store. For example, if a retailer cannot keep stock at the legally required temperature due to power failure, it will result in the wastage of their entire chilled stock offer, which could run into thousands of pounds.

Ofgem has argued that businesses do not need licensing conditions to protect them from remote disconnections and that suppliers instead will agree to voluntarily commitments that will ensure rapid reconnection and compensation arrangements in instances of wrongful disconnection. This is simply not good enough. Convenience stores operate on very tight margin and any delay, even if compensated at a later time, could threaten a business' viability. As highlighted in the attached case studies (Annex 2) businesses have already suffered as a result from not being afforded the same protections as domestic consumers and micro-businesses[3]. It is a real possibility that a significant number of businesses could

[2] Research by the Carbon Trust shows that on average an SME with a smart meter will reduce energy usage between 5-11%. "Advanced metering for SMEs: Carbon and cost savings", Full Report, Carbon Trust, May 2007

[3] Ofgem introduced safeguards for micro-businesses in January 2010. However the narrow definition of the term micro-businesses used meant that the majority of businesses in ACS membership, even small independent businesses with one or two stores, were excluded.

be damaged by wrongful remote disconnection and pre-payment and sufficient licence conditions must be in place to protect them.

Due to the current lack of proposed protections for businesses we do not agree that it is sufficient to retain the current seven day notification period prior to disconnection. The ability to remotely disconnect will place new emphasis on this legislation, as currently suppliers still have to visit and gain access to a premises before carrying out a disconnecting giving retailers the opportunity to delay proceedings if necessary by refusing access. With the possibility of remote disconnection this safeguard will be removed there is a danger that it will lead to a significant increase in wrongful disconnections.

Without the need for a site visit there is also a danger that retailers could be facing disconnection without even being aware of the problem. It must be considered that in companies operating more than one shop it is not realistic that a letter will take under seven days to be processed and acted upon, especially if the communication is being sent to the individual store rather than head office. Smaller retailers could also face problems, for example if they miss the letter through holidays, especially if it is addressed to the manager and staff do not realise its importance. There is also the issue of 'phantom letters', where energy companies claim they have sent letters which the retailer has not received. There is clearly a threat that businesses may be unfairly disconnected under the current proposals which must be addressed.

ACS also has concern that the protections in the Act, which states supply cannot be disconnected when a dispute is in place, will be ineffective in practice. As detailed in the case studies attached, members have had experiences with protracted dealings with energy companies where they have been forced into paying crippling sums through inappropriate threats and pressure. Remote disconnection will make retailers even more powerless. The situation of how businesses can deal with a dispute needs to be examined urgently, perhaps by using Ofgem as mediator who logs any dispute which prevents suppliers from disconnecting the premises until the dispute has been resolved.

We recognise the problems with changing the legislation regarding the seven day period and it may therefore be more sensible to put in place other safeguards, for example mandatory site visits in advance of a disconnection or sending notification letters via recorded delivery, in place instead of amending the Act. As convenience stores have long opening hours, there will not be the issue of the premises not being open to receive letters or site visitors. ACS is keen to talk with Government and Ofgem urgently to discuss effective safeguards that could be introduced to help businesses.

Switching to Pre-Payment

Again we are disappointed that the consultation does not consider extending the protections relating to switching to pre-payment to businesses. We agree with the domestic provisions relating to load and credit limiting and also the provisions relating to identifying a vulnerable consumer and that all these proposed safeguards could and should be transferred to business customers. Convenience stores are often family run businesses, who have no greater resource or knowledge dealing with energy companies than domestic customers, and it is unfair that they are not offered the same protections.

Prepayment, even with innovations such as load lightening and new topping up methods, would be seen as an unnecessary risk for many businesses. The implications of prepayment for convenience stores are not the same as for domestic customers and even for other businesses as the monetary amounts concerned will be significantly higher due to the high level of energy consumption in convenience stores. Therefore issues such as business cash flow at key periods and bank lending facilities must be considered. Prepayment will clearly not be a suitable option for all businesses; therefore the decision to switch to prepayment should only be allowed after discussions on both sides and agreement it is the right option for the business rather than unilateral, remote action by the energy supplier.

The consultation also seeks views on mandating the ability for consumers to pay for pre-payment meters in cash. It is in the consumer interest to insist that suppliers allow a wide range of options for top-up, so that customers can use a range of methods such as cash or card in-store through e-payment systems. Customers may find this easier than having to call up or go online and this payment option should remain.

Commercial interoperability

We agree that suppliers should have to install smart meters which abide by detailed specifications, to ensure commercial interoperability. Interoperability is an important issue for businesses as it is crucial that both non-domestic and domestic customers can easily switch between energy suppliers. Therefore we do not understand why the licensing conditions relating to interoperability are not extended to all energy customers. Ofgem have previously stated that such measures are not necessary in the non-domestic market, as it is generally more competitive than the domestic market, with companies more willing to switch[4]. We would suggest this benefit does not always appear at SME level, as these businesses are hard pressed for time and do not necessary have the in-store expertise. Ofgem has also recently concluded that more needs to be done to promote competition in the non-domestic sector[5]. Therefore it is important that the ability to switch suppliers is retained for business and that while this switching is taking place the meter can still be topped up and used.

ACS is willing to work with Ofgem and DECC to ensure that businesses are protected from the changes in supplies creating by the rollout of smart meters. For further information please contact Jenny Amphlett on 01252 515001 or jenny.amphlett@acs.org.uk

[4] Ofgem consultation on the Smart Metering Implementation Programme in the Non-Domestic Sector, October 2010

[5] See http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Pages/rmr.aspx