

**The Retail Market Review: Non-domestic Proposals Consultation  
Response of the Association of Convenience Stores**

1. ACS (the Association of Convenience Stores) welcomes the opportunity to respond to this consultation. ACS represents 33,500 local shops across the UK. The nature of convenience 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. ACS welcomes the Retail Market Review and the inclusion of non-domestic customers within its scope.
2. This consultation builds on issues set out in the March 2011 Retail Market Review consultation, and aims to improve the relationship between suppliers and their business customers, in order to strengthen the non-domestic energy market.
3. The consultation addresses a number of issues, which we will address in turn.

**Standard Licence Condition (SLC) 7A**

4. ACS welcomes the expansion of SLC 7A protections. Since the introduction of the condition in January 2010, the narrow definition of micro-business<sup>1</sup> has meant that many businesses affected by bad practices have not benefitted from these protections.
5. 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 unrepresentatively high energy use to their business size.
6. Given these issues, and the fact that many stores have no greater resource or specialist knowledge of energy markets than domestic customers, ACS strongly opposed SLC 7A only applying to micro-businesses.
7. The protections in SLC 7A include ensuring clear communication from energy suppliers and allowing customers to cancel their contracts immediately to prevent being rolled over onto costly tariffs. These are basic standards to ensure a fair energy market. We believe extending these protections can only strengthen the non-domestic markets.

---

<sup>1</sup> 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 unrepresentatively 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.

8. However, while the new 'small business' definition will benefit many more businesses, we believe the new scope should be kept under review to ensure that all businesses who may need the protections can be included in the new wider scope.

#### Compliance

9. We are concerned that Ofgem's review of compliance with SLC 7A has shown that suppliers have only taken 'some steps to comply', and that there are a number of technical deficiencies with some suppliers' materials. It is essential that all businesses receive information from their suppliers which is fair, clear and not misleading. Reports that suppliers are not providing full information in relation to the rollover of fixed term contracts and the termination of contracts are cause for significant concern and need to be addressed.
10. ACS welcomes Ofgem's steps to work with suppliers to resolve this, however, if improvements are not seen in the coming months we feel further action is necessary in order to ensure that suppliers' Principle Terms and Statement of Renewal Terms are clear, accurate and contain all relevant information.
11. While further guidance and clarification may help in some cases, suppliers have had 2 years to comply with the new standards. ACS believes Ofgem should consider publishing details of suppliers who are still failing to comply with SLC 7A and should take steps to begin enforcement action against any supplier who consistently fails to improve standards.

#### Rollover and termination procedures

12. ACS welcomes Ofgem's recognition of the continuing issues around termination procedures, and the decision to review the current policy of allowing automatic rollover of contracts for 12 months. ACS opposed the continuation of rollover contracts as we do not believe this is a fair solution for business customers.
13. 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.
14. While we understand concerns about retailers being faced with increased deemed rates if rollover contracts were prohibited, 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.
15. We welcome Ofgem's decision to look into sellers' pricing of deemed rates as a means to resolve this interim issue, and we look forward to working with Ofgem on their review of rollover and termination terms in SLC 7A over the coming year.

#### **Customer transfer blocking – 'objections'**

16. The Retail Market Review – Findings and Initial Proposals consultation, published in March, set out concerns over suppliers' use of objections to supply transfer. SLC 14 currently sets out the conditions for non-domestic customer transfer blocking, however

evidence of large numbers of complaints, multiple objections and ineffective communication from suppliers clearly shows that the current process is not working to the best interests of customers.

17. As with SLC 7A, we believe all customers should receive information which is fair, clear and not misleading, and is both accurate and contains all pertinent information. It is clear that this has not occurred in relation to objections procedures.
18. While we welcome the recognition of the concerns we raised in our response to the March consultation, we do not believe enough has been done to address this issue in the intervening timeframe. The current situation risks damaging the market by giving businesses a negative perception of both suppliers and the industry, making them reluctant to switch supplier in future. If an objection is raised, retailers need to be able to quickly solve the issue with minimum cost and time burdens.
19. We do not believe that an open letter is sufficient to address the failings so clearly shown in the data supplied. We call on Ofgem to review SLC 14 and investigate what additional rules may be necessary to ensure compliance. As part of this, we reiterate our call for the following explicit conditions to be 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 previously agreed by the customer) 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 supplier must provide a named contact and correct contact details with the supplier to ensure the issue can be resolved quickly
  - Until the issue is resolved the customer must be kept on the same tariff as they are contracted on.
20. We recognise that Ofgem are currently considering enforcement action in relation to some suppliers' objections procedures. However, given the time that has elapsed, we believe strong, visible action is needed to ensure that suppliers take these issues seriously and are incentivized to take steps to improve their practices.
21. ACS recommends that provision of objections data should be mandatory, and that the information should be published on a regular basis. In addition, suppliers who are found guilty of consistent spurious objections or persistent faults in procedure should be subject to immediate enforcement action.

### **Third Party Intermediaries**

22. ACS welcomes the proposed three pronged approach to improving regulation of third party intermediaries in the energy market. As we outlined in our response to the March consultation, understanding and use of TPI varies throughout the convenience store sector, therefore the measures proposed will provide much needed protections, especially for small business customers.
23. However, we do believe there are a number of points of the proposal which need to be reviewed if this approach is to be successful. Ofgem's current proposal is based on

three elements of the TPI market. ACS disputes whether there are 'TPIs who don't have a relationship with Suppliers', as stated, as by definition all TPIs will have some form of relationship with suppliers. We believe this element either needs to be removed or clarified to state the nature of the relationship (i.e. indirect or direct dealings with suppliers). We would also welcome a commitment by Ofgem to explore further the potential for Code of Practice requirements to record all phone calls from TPIs, as outlined in our previous submission, in order to prevent persistent or aggressive cold calling.

24. In addition, it is important when designing the proposed new Standard Licence Condition and the Accreditation Scheme for TPI Codes of Practice, that lessons are learnt from the issues which have arisen around other SLCs. ACS would welcome the opportunity to work with Ofgem to ensure the new SLC is both robust and enforceable.
25. We agree that, in order for these measures to be effective, Ofgem should have the power to take action against any misselling in the business sector. We support Ofgem's request to be given enforcement powers for the Business Protection from Misleading Marketing regulations, and look forward to an early response from BIS to allow progress in this area.

### **Standards of Conduct (SOC)**

26. ACS welcomes the proposal to extend the Standards of Conduct to all interactions between suppliers and consumers, and that these should be included in a licence condition which can be enforced. We believe this new approach will provide a more robust framework for fair and transparent exchanges between suppliers and customers.
27. In order for this to be effective from implementation, it is important to ensure that suppliers receive clear guidance on how to comply with the conditions. For example, we would welcome further clarification of how a supplier is to determine what is classified as 'more important information' and 'appropriate prominence', to ensure the spirit as well as the letter of the SOC is applied. We believe it would be useful for Ofgem to issue examples of best practice to ensure suppliers and customers know what to expect under these new conditions.
28. We welcome the proposal to extend the SOC to all business customers. Trust in the sector is important for all customers. Extending the scope of application provide consistency not only for businesses but also to suppliers in how they engage with their customers.
29. We support Ofgem's principles based approach to regulation as a flexible and proportional means of bringing about positive change in the sector. We believe the new SOC, along with clear guidance and the ability to take enforcement action if necessary are a big step to improve levels of trust in the industry.

### **Backbilling**

30. While these measures are an important step forward to improving the non-domestic energy market, there are also additional 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.

31. ACS is disappointed that the consultation did not attempt to address this important issue which is having a serious impact on businesses across the country. As demonstrated in our previous submissions, retailers are often faced with back-bills for large sums, often through no fault of their own. There needs to be urgent action to protect retailers from these gross abuses.
32. While we understand that energy suppliers are working on creating an industry agreed standards to address this, there needs to be more active involvement from the regulator to ensure this is robust, adhered to and, if necessary, enforced.
33. As highlighted previously, this issue of unfair back billing could become more prominent with the roll out of smart meters and the potential for remote disconnection where bills are disputed. It is critical that Ofgem ensures protections are 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 supplier errors. 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.

14 February 2012