

Retail Market Review – Updated Proposals for Businesses

Consultation Response of the Association of Convenience Stores

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to this consultation. ACS represents 33,500 local shops across the UK (Annex A). The nature of convenience retail, with long operating hours, necessary use of refrigeration and other equipment, means that energy costs are a critical factor in the viability of a convenience store business. 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 specific focus on non-domestic customers within the consultation.

This consultation continues to build on issues previously consulted on in the March 2011 Retail Market Review and expanded upon in the February 2012 Non Domestic Proposals. The proposals aim to improve the relationship between suppliers and their business customers in order to strengthen the non-domestic energy market.

The consultation addresses a number of issues, which we will address in turn.

Standard Licence Condition (SLC) 7A

Small Business Definition

ACS welcomes proposals to extend the scope of Standard Licensing Condition 7A beyond the narrow definition of microbusiness¹. The proposed definitions (electricity consumption of ≤100,000 kWh per year OR gas consumption of ≤ 293,000 kWh per year OR less than 10 employees) will encompass the majority of our independent members. As of April 2012, the UK convenience sector has 49,840 stores, 88% of which are under 2000 sq ft². We believe that most stores of this size would stay under at least one of the new thresholds.

The extension of SLC 7A to include businesses with higher electricity and gas usage will include many small retailers who would otherwise be ineligible to receive protections under SLC 7A due to the number of part time staff that they employ.

While proposals to protect more businesses through changes to SLC 7A are welcome, these changes would be inconsequential to retailers without the support of the Ombudsman in the

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 unrepresentatively high energy use to their business size.

² ACS Local Shop Report 2012. (www.acs.org.uk/research).

event of something going wrong. All businesses who receive protections under the proposed changes to SLC 7A should receive the same support from the Ombudsman and the Citizens Advice Consumer Service.

We note that amended legislation needs to be presented in 2013 to extend the remit of the Ombudsman to include businesses covered under the new 'small business' definition of the proposed SLC 7A and strongly support the introduction of this measure.

Contract End Dates and Notice

ACS welcomes proposals to require the publication of contract end dates on all bills, although further clarification is required as to the definition of 'prominent' as per the consultation. We propose that the contract end date be required to be published on the first page of any energy bill, reminder or statement.

With more customers dealing with their utility companies online, we propose that the contract end date requirement also be extended to online services. The end date should be prominently displayed on the first page of any customer's online account.

ACS welcomes proposals to amend SLC 7A to allow small business customers to give termination notice at any time during their contract up to the final allowed day of the notice period. However, the current end dates for termination notices are too variable between energy companies.

We propose the introduction of an industry standard notice period for termination of 30 days before the end of a fixed term contract, which would eliminate the confusion that many businesses face. This final date should be included prominently alongside the end date on bills, reminders and statements.

Rollover and termination procedures

Many small businesses have received letters from their suppliers offering them an uncompetitive rate (up to 40-50 per cent premium as noted in the consultation) and a date by which they have to respond before this new offer becomes the contract rate applicable for up to two years.

In a number of cases, the small business owner/manager has a number of other things to deal with and on occasions will find that such correspondence arrives while they are away from the business, through illness, holiday, official business etc. and they have not had a chance to deal with the contract.

We believe that suppliers should be required to receive affirmation from a customer in writing as to the following terms' rates before the renewal of a contract. This would resolve the issue of rollover contracts and lead to more competitive terms and negotiations between customers and suppliers.

Businesses should also receive the same 30 day 'cooling off' period that is in place for domestic customers. Retailers whose first language is not English may not fully understand the terms that they are signing up to when dealing with energy company representatives over the phone and as a result could be left with an uncompetitive contract. The introduction of a 30 day 'cooling off period' would reinforce the message that all energy customers – not

just domestic consumers – have the right to fair contracts and would allow retailers an opportunity to go through the detail of the terms of their contract.

In the event that a contract end date expires without agreement of terms for a new contract, we propose that the business be put on a temporary deemed rate while a new contract is negotiated.

Customer transfer blocking – ‘objections’

Previous iterations of the Retail Market Review consultation have 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 evidence³ 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.

Figures noted in the consultation that some suppliers still object to 50 per cent of consumers wishing to leave illustrate that voluntary assurances are insufficient to prevent excessive use of the objections procedure.

Objections and the subsequent re-application rates of new suppliers ultimately harm the customer. Energy customers should not be subject to unnecessary delays in switching while their current and future suppliers argue over objections, while paying inflated rates during the interim period.

We do not believe that current action has been sufficient to address the practices of energy suppliers’ use of objections. While customers receive a letter informing them of unsuccessful transfer requests, they are often not told about an objection in the first instance.

To resolve this, ACS recommends that all suppliers be required to inform their customers (in a form previously agreed by the customer) that an objection has taken place, including correct contact details to deal with the issue quickly and efficiently. Retailers work among the longest hours of any profession⁴ to sustain their business and have neither the time nor the resource to spend hours on the phone trying to resolve a transfer issue.

If excessive use of the objections procedure does not fall significantly after the changes proposed as part of this consultation are implemented, Ofgem should consider swift regulatory action for the benefit of all customers.

Standards of Conduct for non-domestic consumers

ACS welcomes Ofgem’s proposal to implement binding Standards of Conduct for when interacting with small businesses within the defined activities of billing, contracts and transfers (option 4). As noted in the consultation, these issues cover more than two thirds of all business contact. However, we believe that Ofgem should make explicit the inclusion of backbilling limits in the new licensing condition 7B.

³ The Retail Market Review – Updated proposals for businesses (2012)

⁴ ACS Local Shop Report, page 12 (2012)

In our initial submission to the Retail Market Review consultation in March 2011, ACS highlighted that the issue of backbilling requires urgent attention. Many retailers have been subject to backbills of thousands of pounds going back a number of years, often at no fault of their own. While suppliers are required to restrict backbills for domestic consumers to 12 months, they can bill non domestic consumers for up to six years of incorrect bills.

As noted in Ofgem's Open Letter on backbilling in October 2012, nearly 10% of backbills issued were greater than £10,000. This amount, which retailers feel obligated to pay after significant pressure from suppliers, is enough to put many small entrepreneurs out of business altogether.

Since 2012, voluntary standards of conduct have been put in place for backbilling which require suppliers to limit backbills to three years for electricity and four to five years for gas when a microbusiness customer has taken all reasonable steps to avoid a backbill. These voluntary measures do not go far enough, and will still lead to backbills of thousands of pounds being issued to customers every year.

ACS recommends the introduction of a twelve month limit on backbilling in cases of supplier fault as part of the new licensing condition 7B. This would stop the financial and emotional damage inflicted on retailers and other small businesses every year, whilst not disproportionately impacting any supplier or set of suppliers as concluded in the Open Letter from Ofgem of October 2012.

The consultation notes that "consumers should feel that when they interact in the market they will receive accurate information". We believe that Ofgem should include enforcement against inaccurate (not estimated) billing which leads to backbills being issued as part of the Standards of Conduct.

Third Party Intermediaries (TPIs)

ACS welcomes proposals to implement a single code of practice for third party intermediaries. We recognise that TPIs can often provide a valuable service to retailers who are time constrained. However, the understanding and use of third party intermediaries remains varied through the convenience sector; and many retailers are not aware of the cost implications associated with dealing with TPIs. A single code of practice which makes clear the process of engaging with TPIs will be useful for businesses.

We believe that any code of practice for TPIs should be applicable to engagement with all businesses, not just small or microbusinesses. Many businesses whose resource and expertise is similar to that of a small business would fall outside of the remit of a narrowly applicable code of practice. To promote a transparent, fair marketplace the code of practice should apply to all businesses.

ACS has concerns about proposals for a working group to consult on the code of practice for TPIs. A similar process had been put in place for the backbilling code, which was subject to a number of delays and resulted in a diluted, voluntary code that does little to hold suppliers to account and imposes further conditions on businesses.

For a single code of practice to be effective, it is essential that Ofgem has powers to hold TPIs to account for bad practice in the marketplace. We believe that a single, enforceable code of practice linked to a marketing licensing condition in conjunction with use of the Business Protection from Misleading Marketing Regulations to take action directly against TPIs who mis-sell to business consumers is the most effective way to ensure better outcomes for consumers.

Other Issues Raised in the Review

Timetables for implementation

Since the publication of the first iteration of the Retail Market Review consultation in 2010, there has been slow progress on the implementation of protections for small businesses. ACS welcomes the timescale for implementation of the Standards of Conduct as long overdue, but suggests that these implementation deadlines be published clearly on Ofgem's website and that all customers are notified of changes by suppliers when they take place. ACS will also communicate all implementation dates to members.

With regard to the timescale for implementation of the extension of SLC 7A to include small businesses, we have concerns that small businesses who enter into contracts longer than 12 months in duration will be exposed for an extended period of time. ACS proposes that for contracts entered into before Day 1, the requirements of SLC 7A will come into effect on Day 1 plus four months. This will prevent a situation where businesses in existing contracts receive protections at different times based on the remaining duration of their contract, and simplify engagement with suppliers.

The impending rollout of Smart Meters will have a significant effect on the number of backbills being issued to business customers, many of which will be issued as a result of supplier fault. We propose that action be taken on backbilling through the introduction of an additional clause in SLC 7B before the start of the Smart Meter rollout in 2014.

Market Competition

We believe that concerns raised by suppliers about whether binding standards of conduct for the non-domestic market were appropriate due to the more competitive nature of the business market compared to the domestic market are unfounded. Research referred to in the consultation shows that 31% of small and microbusinesses have never considered switching, and a number of those who have considered changing their energy supplier have been subject to a number of objections and a lack of clear information about the termination periods in their contract. Competitiveness in the business energy market should not be defined by whether suppliers offer minimum standards of conduct with their customers.

If you have any further questions or comments regarding this submission, please contact Chris Noice on 01252 533013 or email chris.noice@acs.org.uk

Annex A – 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, Nisa Retail and The Co-operative Group, 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.