

GEMA gaining enforcement powers under the Business Protection from Misleading Marketing Regulations 2008

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 Ofgem's attention on the third party intermediary (TPI) market and its aim to ensure that TPIs who are acting irresponsibly are dealt with effectively.

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.

New Powers

ACS welcomes the introduction of additional powers to be able to enforce the Business Protection Regulations (BPRs). We believe that the regulation of brokers and TPIs should be the same for both domestic customers and small business customers. Ofgem's ambition to have a consistent approach between the enforcement powers available for breaches in the consumer and non-domestic market is welcome, but we believe that this approach should be extended to other areas of the marketplace, such as backbilling and rollover contracts. As noted in our submission to the Retail Market Review: Updated Proposals for Business consultation, the non-domestic market is not effectively self-regulated by either suppliers or TPIs and Ofgem's intervention is necessary to ensure that convenience retailers and other businesses are not taken advantage of.

Scope of Powers

ACS believes that regulatory activity for TPIs should apply for any potentially misleading activity with business customers. Convenience store retailers deal with a number of issues in their day to day lives and do not have the time to research everything about their energy contracts nor do they have dedicated employees whose job is to deal with the intricacies of energy deals as large businesses do.

While the redefined microbusiness category includes many more businesses including convenience stores that would benefit from stronger sanctions for misleading marketing from TPIs, there are still some store owners who fall outside the definition of a microbusiness that should benefit from the protections of a single code of practice.

Other Issues Raised in this Consultation

ACS believes that new enforcement powers granted to Ofgem to enforce the BPRs will only be effective if coupled with a robust single code of practice for TPIs which gives business customers confidence that any activity with TPIs will be transparent and accountable.

We believe that if a TPI is found to have mis-sold and promised unrealistic prices then the contract should be immediately ended and the retailer refunded the difference to the prices that were promised to them. As there is likely to be a lengthy process to reclaim money the retailer should be able to claim interest on any money owed to them during the period the dispute goes on for. There should be no risk that the company's energy is cut off.

There has also been suggestion of some level of accreditation for responsible TPIs. We welcome this, and believe it should be supported by a requirement on suppliers to only engage with accredited TPIs. This would stop the problem of TPIs acting on behalf of a single supplier instead of brokering the market as they should be.

ACS also welcomes the continuing efforts and widespread support for the introduction of a single code from all parties, including TPIs, suppliers and consumer groups. However, we strongly believe that any code, including any necessary consultations, should be completed before the end of 2013.

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.