

dti

**Extended Warranties – consultation
on proposed Statutory Instrument**

Consultation by the Department of Trade and Industry on draft legislation to implement the remedies recommended in the 2003 Competition Commission report on the supply of extended warranties on domestic electrical goods.

JULY 2004

URN 04/1388

dti

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

ABOUT THIS CONSULTATION

This consultation concerns an Order the Secretary of State for Trade and Industry intends to make in relation to the supply of extended warranties on domestic electrical goods within the UK.

The Competition Commission's report: "A report on the supply of extended warranties on domestic electrical goods in the UK" was presented to Parliament by the Secretary of State for Trade and Industry and published on 18 December 2003 (CM 6089)("the Report"). This consultation concerns the Order the Secretary of State for Trade and Industry intends to make pursuant to the Report.

Before the Secretary of State makes the Order she is required, under section 91(2) of the Fair Trading Act 1973 (the "Act"), to publish a notice so that anyone with an interest in the matter may make representations to her.

The Secretary of State hereby gives notice that she intends to make an Order under sections 56(2) and 90(2) and (7) of, and paragraphs 1, 9 and 12A of Schedule 8 to, the Act, for the purpose of preventing or remedying the adverse effects specified in the Report. The Order is expected to come into force on 1 December 2004 with the exception of Article 4 which will come into force on 1 February 2005.

The Order will make provision about the supply of extended warranties on domestic electrical goods in the UK. The nature of the proposed provisions to be embodied in the Order are set out in Annex A. The making of the Order will be subject to the Secretary of State considering any representations that she receives.

Any person whose interests are likely to be affected by the Order, and who wishes to make, or is desirous, of making representations in respect of it, should do so in writing to Mr Yuen Cheung, Consumer and Competition Policy Directorate, Department of Trade & Industry, Room 613, 1 Victoria Street, London SW1H 0ET, stating what their interest in the matter is and the grounds on which they wish to make representations before **Friday 22 October 2004**.

Issued 28 July 2004

Respond by 22 October 2004

Enquiries to Yuen Cheung, DTI, Room 613, 1 Victoria Street, London, SW1H 0ET,
monopannounce@dti.gsi.gov.uk

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About the consultation and how to respond

- 1.1 This consultation is primarily of relevance to businesses involved in the sale or provision of extended warranties (EW) on domestic electrical goods (DEG). This includes retailers who sell EWs at point of sale in stores, through catalogues, mail order, telephone sales and the Internet. It is also of interest to all manufacturers selling EWs with DEGs sold directly to consumers, all insurers underwriting insurance backed EWs whether sold directly or indirectly through retailers, and all EW service companies contracted with retailers, manufacturers or insurers.
- 1.2 This consultation is specifically intended to secure views on **the scope, timing and form of the Order** proposed to implement the recommendations in the Competition Commission report “A report on the supply of extended warranties on domestic electrical goods in the UK”¹. It is intended that the proposed Order will come into effect on 1 December 2004, other than Article 4 of the Order, which would come into effect on 1 February 2005. It is not intended that the Order will apply to EWs offered at no charge.
- 1.3 Paragraphs 1.8 to 1.10 below explain how to respond to this consultation document. We are particularly keen to receive any views from business on the following areas:
- **To better understand the cost to business – which will be of value to development of the final Regulatory Impact Assessment – it would be helpful if businesses can offer a view on the potential compliance cost. It would help to understand how this might breakdown between administrative costs, training costs, printing and postage costs and costs to finance companies if contracts cancelled. In particular, we would welcome information on costs relating to the proposal to defer the requirement for information to be printed in catalogues until 1 February 2005;**
 - **views from business and consumer bodies on any practical issues arising from the proposed deferred implementation in relation to catalogue based sales,**
 - **views from business and consumer bodies on the extent these steps to open up the Extended Warranty market place to competition will allow businesses to produce additional extended warranty products aimed specifically at securing sales in this market,**
 - **any detailed comments on the text of the draft Order; and**
 - **identify any other practical issues which it might raise for business, consumers and enforcement agencies.**
- 1.4 The case for change was set out in the Competition Commission’s report on the supply of extended warranties on domestic electrical goods published on 18 December 2003. The Government has already reviewed and accepted the Commission’s findings and the

¹ CM6089, published on 18 December 2003. Copies of the Report are available at the Competition Commission’s web-site: <http://www.competition-commission.org.uk/inquiries/completed/2003/warranty/index.htm>

package of remedies proposed by the majority of the Commission. The Commission carried out a detailed investigation lasting nearly eighteen months, under the Fair Trading Act 1973. During its investigation, the Commission consulted widely and took into account evidence and views from manufacturers, retailers, insurers, associations, mobile phone sellers, computer sellers, other sellers of EWs and interested organisations. The Commission held hearings with Argos, Comet, Dixons, D&G, Littlewoods, NOP, Retra and the Consumers Association, Apple, ABI, Allianz Cornhill, British Retail Consortium, Dell, DrKW, the Financial Services Authority, the Treasury, John Lewis, Landmark Insurance, PA Consulting, Phones4u, Pinnacle, Powerhouse, Sony, Warranty Direct and Whirlpool. There was also a public hearing held in London in 2003 attended by most of the parties mentioned. On 28 February 2003 the Commission sent an Issues Statement² to retailers, manufacturers and insurers and on 20 May 2003 issued a Remedies Statement³ as it wished to consult parties on possible remedies. A revised version of the Remedies Statement was published on 23 July 2003⁴. **This consultation therefore focuses on the route to implement the package of remedies.**

1.5 In summary the proposed Order (Annex A) will prescribe certain conditions relating to the sale of extended warranties. These requirements reflect the recommendations in the Competition Commission's report and in particular they provide for businesses to:

- show the price of the extended warranty alongside the electrical good, in store, in catalogues and in adverts;
- give consumers information about statutory rights, cancellation rights, details of the warranty;
- give consumers 45 days to cancel their extended warranty and receive a full refund, including a written reminder of this right and the right to cancel subsequently and receive a pro-rata refund;
- offer customers a quotation preserving their right to purchase the extended warranty on the same terms for 30 days if the consumer chooses not to buy it there and then. Any discounts tied to the purchase of the extended warranty should also be available for 30 days; and
- Inform customers about whether or not their warranty provides financial protection in the event of insolvency.

1.6 To allow a full 12 week public consultation period, we consider it sensible to give notice to business of the Department's intention to implement these measures by 1 December 2004 subject to any adjustments as may be justified by representations received in response to this consultation document. This should ensure that businesses are able to commence their preparations to comply with the proposed Order.

Closing date

² Appendix 2.1, Vol 3, Competition Commission report on supply of extended warranties on domestic electrical goods, CM 6089 III

³ Appendix 2.2, Vol 3, Competition Commission report on supply of extended warranties on domestic electrical goods, CM 6089 III

⁴ Appendix 2.3, Vol 3, Competition Commission report on supply of extended warranties on domestic electrical goods, CM 6089 III

- 1.7 Interested parties have until Friday 22 October 2004 to respond to this consultation. To ensure your views are considered, please ensure that any responses reach the DTI by no later than that date.

How to respond

- 1.8 Your response can be sent by any of the following routes:

By email to:

monopannounce@dti.gsi.gov.uk

By post to:

Yuen Cheung

Room 613

Department of Trade and Industry

1 Victoria Street

London SW1H 0ET

Or by FAX to:

020 7215 6437

- 1.9 Please make clear whether your response is being made in a personal capacity or on behalf of an organisation.

Outcome

- 1.10 All responses will be considered. The outcome of this consultation will be published on the DTI website in November 2004, and as appropriate reflected in the final Order which will be presented to Parliament with a view to it coming into effect on 1 December 2004.

Additional copies

- 1.11 Additional copies can be downloaded from <http://www.dti.gov.uk/ccp/topics2/extendwarrant.htm>

- 1.12 Copies of the consultation document can also be ordered from:

DTI Publications Orderline

ADMAIL Publications

London SW1W 8YT

Tel: 0870 1502 5000

Fax: 0870 1502 333

Minicom: 0870 1502 100

www.dti.gov.uk/publications

Confidentiality

- 1.13 Please note responses to this consultation will be made publicly available in summary, in whole or in part at the Department's discretion. **If you do not wish all or part of**

your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential.

- 1.14 Where confidentiality is not expressly requested, responses may be made public to any enquirer, including enquirers outside of the UK, or published by any means including the internet.
- 1.15 **Please note** that email responses sent from corporate systems may carry an automatically generated notice stating that the contents of the message should be treated as confidential. Where you do not wish your views to be treated as confidential, please make it clear that such an automatically generated message does not apply.

Consultation Code of Practice

- 1.16 A copy of the DTI Code of Practice on Consultation is in Annex D.
- 1.17 If you have any questions or unhappy about the way this consultation is being run please contact:

Nick Van Benschoten
Consultation Co-ordinator
Department of Trade and Industry
Room 723
1 Victoria Street
London SW1H 0ET
nick.vanbenschoten@dti.gsi.gov.uk

WHAT IS BEING CONSULTED ON AND WHY THIS CHANGE IS NEEDED

- 2.1 Following complaints from consumers and consumer groups, the Office of Fair Trading (OFT) originally investigated the selling of extended warranties in 1994. As a result of that investigation a voluntary Code of Practice was introduced in 1995, sponsored by the British Retail Consortium. OFT investigated again in 2001 and found that compliance with the voluntary code was poor and that self-regulation had not worked even though it had been in place for six years. Therefore, the Director General of Fair Trading formally asked the Competition Commission to investigate the market on 2 July 2002.⁵ The Competition Commission report on the supply of extended warranties on domestic electrical goods was published on 18 December 2003.
- 2.2 The Commission concluded that there is a complex monopoly situation within the EW market which operates against the public interest. This involves all retailers who sell EWs at Point of Sale (POS) in stores, through catalogues, mail order, telephone sales or the internet, all manufacturers selling paid EWs with DEGs sold directly to customers, all insurers underwriting paid EWs sold through retailers, and all service companies contracted with retailers, manufacturers or insurers.

The Commission identified four overlapping characteristics of market behaviour which might distort or restrict competition:

- almost all Extended Warranties (EWs) are bought at point of sale. Few consumers consider EWs prior to their purchase and have little opportunity to consider alternatives in the shop;
- EWs on offer at point of sale are nearly always from one provider, usually the retailer;
- there is generally no information available on reliability of electrical goods or likely repair costs;
- there is generally no information available at point of sale on prices, terms or conditions about EWs from alternative providers.

In this context, the practices of EW providers at POS distort or restrict competition by retailers offering and selling only their own EWs at prices which are not displayed or fully cost reflective, lack of information on alternative providers, and requiring full payment in advance of any benefits.

Profits earned by retailers on EWs, are shown to be consistently and substantially above the cost of capital. This margin reflects the huge competitive advantage of selling EWs at POS; the EW can be sold as an immediate and relevant secondary purchase at a time convenient to the customer. The five major retailers (Dixons, Comet, Powerhouse, Littlewoods and Argos) have in total made profits in excess of the cost of capital in the range of £116 to £152 million per annum, over 5 years to 2002. If profits on EWs for

⁵ For more background on past investigations see paragraphs 3.3 to 3.12 of Volume 2 of the Report, CM 6089II

these five retailers had been in line with the cost of capital, prices of EWs would have been on average up to a third lower.

2.3 The Government reviewed and endorsed the Commission's findings. In its response the Government noted:

- Too often consumers are not made aware of the rights they are already entitled to and are pressured into taking out an extended warranty that can be almost as expensive as the product itself. Most electrical goods already come with a one-year guarantee. If consumers decide they need an extended warranty, they should shop around and check they're getting the best value for money.

2.4 The Government decided to accept the findings of the Commission and the approach proposed by the majority of the Commission's members for remedying the situation. In particular consumers should be given more access to information about the warranties and a longer period to cancel if they change their minds. The Office of Fair Trading will be invited to review the position after two years to consider if they find that competition has improved sufficiently by then, and whether it might be necessary to take further action.

2.5 To remedy the adverse effects identified by the CC, the draft Order contains the following measures to implement the following Commission recommendations:

- The requirement to display the price of an applicable EW alongside domestic electrical goods in store, in catalogues, in press advertisements and other publicity and on websites;
- Cancellation and termination rights, including the right to cancel an EW with a full refund within 45 days from purchase if no claim has been made (and the provision of a written reminder of the right to cancel), and the right to subsequently terminate an EW and obtain pro-rata monetary refund;
- The provision on request of a written quotation stating that the EW remains available for 30 days on the same terms (which a customer purchasing an EW must acknowledge in writing) and the requirement that offers of a discount on prices contingent on the purchase of an EW should be available to the consumer for the period of the quotation; and
- The requirement to make available to consumers information setting out details on statutory rights, the availability of EWs from other organisations, the possible relevance of household insurance for some consumers, cancellation rights and the nature of the warranty.

2.6 Since the Competition Commission report was published DTI has received a number of representations from business which we have considered carefully. As a result we believe that it is important to take account of specific compliance issues which affect catalogue retailers, in particular, the fact that Autumn and Winter catalogues will already be in use and valid until the early part of 2005. We have therefore specifically drafted the Order to allow for later compliance in relation to information to be printed in catalogues offering extended warranties. The effect being that the printed information requirements in respect of catalogue based extended warranty offers would apply to catalogues published after the date of implementation, although the other consumer rights would apply from the outset. All the provisions will apply to

catalogues published after 1st February 2005. We consider the delay in delivering the increased consumer protection in this area, is justified having regard to the fact that catalogue customers are not exposed to the pressure selling which might apply to Point of Sale offers. We specifically welcome views from business on this proposed differentiated implementation approach, and in particular an indication of the potential costs/benefits which it offers when compared to the requirement affecting all warranties offered from 1 December 2004 onwards.

- 2.7 Draft explanatory notes explaining the effect of the Articles of the Order in detail are also provided.
- 2.8 A draft Regulatory Impact Assessment is attached at Annex B. We would welcome any views on the analysis of costs and benefits, and the extent to which these might alter if some of the proposed measures were subsumed within professional regulations. We would also welcome views on whether the proposals might give rise to unforeseen consequences.

Useful Links

Relevant background documents including the Competition Commission report can be found on <http://www.dti.gov.uk/ccp/topics2/extendwarrant.htm>

 [D R A F T] S T A T U T O R Y I N S T R U M E N T S

2004 No.

COMPETITION

The Supply of Extended Warranties on Domestic Electrical Goods Order 2004

<i>Made</i> - - - -	<i>2004</i>
<i>Laid before Parliament</i>	<i>2004</i>
<i>Coming into force</i>	
<i>Article 4</i>	<i>1st February 2005</i>
<i>Remainder</i>	<i>1st December 2004</i>

Whereas the Director General of Fair Trading, in exercise of the power conferred on him by sections 47(1), 49(1) and 50(1) of the Fair Trading Act 1973⁽¹⁾ (“the Act”), made a monopoly reference on 2 July 2002 and, in response to the reference, the Competition Commission made a report entitled: “A report on the supply of extended warranties on domestic electrical goods within the UK”⁽²⁾ (“the Competition Commission Report”);

Whereas the Secretary of State, in accordance with section 91(2) of the Act⁽³⁾, published a notice on 28 July 2004 stating her intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 22 October 2004;

And whereas the Secretary of State has considered the representations received;

Now, therefore, the Secretary of State, being the appropriate Minister under section 56 of the Act, in exercise of the powers conferred on her by sections 56(2) and 90(2) and (7) of, and paragraphs 1, 9 and 12A of Schedule 8 to, the Act⁽⁴⁾, and for the purpose of remedying or preventing the adverse effects specified in the Competition Commission Report, hereby makes the following Order:

Citation commencement and interpretation

1.—(1) This Order may be cited as the Supply of Extended Warranties on Domestic Electrical Goods Order 2004.

⁽¹⁾ 1973 c.41.

⁽²⁾ Cm 6089.

⁽³⁾ Section 91 was repealed by the Enterprise Act (c. 40), Schedule 26 but, pursuant to the Enterprise Act 2002, Schedule 24, paragraphs 14 and 19, and SI 2003/1397 (“the saving provisions”), it continues to apply in respect of monopoly references made before 20 June 2003 under section 50 of the Act.

⁽⁴⁾ Sections 56 and 90 of, and Schedule 8 to, the Act were repealed by the Enterprise Act 2002, Schedule 26 but, pursuant to the saving provisions, they continue to apply in respect of monopoly references made before 20 June 2003 under section 50 of the Act.

(2) This Order shall come into force on 1st December 2004, except for article 4 which shall come into force on 1st February 2005.

(3) In this Order—

“domestic electrical good” means a product designed to be connected to an electricity supply or powered by batteries and used for domestic purposes;

“domestic electrical good cover” includes, but is not limited to, cover for the cost of repairing a domestic electrical good, cover for the replacement of a domestic electrical good, and access to a helpline in relation to the functioning of a domestic electrical good;

“extended warranty” means a contract for domestic electrical good cover entered into by a consumer for monetary consideration;

“further relevant information” means information describing in general terms—

- (a) consumer rights under the Sale of Goods Act 1979 relating to the purchase of domestic electrical goods,
- (b) that extended warranties may be available from other providers,
- (c) that household insurance may be relevant to the purchase of a domestic electrical good, if that is the case,
- (d) that an extended warranty need not be purchased at the same time as a domestic electrical good,
- (e) the consumer’s cancellation and termination rights pursuant to article 7,
- (f) the nature of the financial protection provided to a consumer who purchases an extended warranty offered by the supplier in the event of the provider of the extended warranty going out of business, and
- (g) whether or not cover will cease in the event of a domestic electrical good being replaced under an extended warranty offered by the supplier;

“offer” includes an invitation to treat and cognate expressions shall be construed accordingly;

“provider” means the person who has a contractual relationship with a consumer who enters into an extended warranty;

“supplier” means a person who offers to supply a consumer with an extended warranty, either directly or on behalf of a third party, at the same time as offering to supply a consumer with a domestic electrical good or immediately subsequent to the sale of a domestic electrical good; and

“Tax” means Value Added Tax or Insurance Premium Tax.

(4) For the purposes of articles 2 to 5, the price and duration of an extended warranty that is applicable to a range of domestic electrical goods shall be displayed or published in close proximity to that range if the price and duration may be seen when looking at any of the domestic electrical goods in that range.

Obligation to display the price of an extended warranty, provide further relevant information and provide a written quotation: in store

2.—(1) Whenever a supplier displays the price of a domestic electrical good in store, the supplier shall—

- (a) display the price and duration of one applicable extended warranty adjacent to the price of the relevant domestic electrical good or, where the price and duration of that applicable extended warranty applies to a range of domestic electrical goods, in close proximity to that range, in a manner that—
 - (i) gives similar prominence to the price of the relevant domestic electrical good;
 - (ii) is clearly legible; and
 - (iii) makes clear that the purchase of an extended warranty is optional;

- (b) ensure that leaflets providing further relevant information are prominently displayed in a manner that ensures, so far as is reasonably possible, that they are likely to come to the attention of consumers, and that such leaflets are freely available to consumers;
- (c) supply a leaflet providing further relevant information to a consumer before that consumer purchases an extended warranty;
- (d) subject to paragraph (2), provide a written quotation for an extended warranty upon request by a consumer, and in any case before a consumer purchases an extended warranty, and the written quotation shall prominently state—
 - (i) the price and duration of the extended warranty and the domestic electrical good to which it applies;
 - (ii) that the extended warranty does not have to be purchased at the same time as the domestic electrical good specified;
 - (iii) that the extended warranty can be purchased at the price quoted in the written quotation for a period of 30 days beginning with the day on which the written quotation is issued;
 - (iv) the consumer’s cancellation and termination rights pursuant to article 7; and
 - (v) that extended warranties may be available from other types of providers.

(2) Paragraph (1)(d) shall not apply where the price of an extended warranty is £20, inclusive of Tax, or less.

(3) In this article “in store” means in the retail premises from which domestic electrical goods and extended warranties are offered for sale.

Obligation to publish the price of an extended warranty and provide further relevant information: newspaper advertisements and other printed publicity

3.—(1) Subject to paragraph (3), whenever a supplier publishes the price of a domestic electrical good in a newspaper advertisement or in other printed publicity, the supplier shall—

- (a) publish the price and duration of one applicable extended warranty adjacent to the price of the relevant domestic electrical good or, where the price and duration of that applicable extended warranty applies to a range of domestic electrical goods, in close proximity to that range, in a manner that—
 - (i) gives similar prominence to the price of the relevant domestic electrical good;
 - (ii) is clearly legible; and
 - (iii) makes clear that the purchase of an extended warranty is optional;
- (b) publish a statement to the effect that further relevant information relating to the purchase of extended warranties offered by the supplier is available upon request by a consumer.

(2) A supplier referred to in paragraph (1) shall ensure that further relevant information is provided to a consumer upon request.

(3) This article shall not apply in respect of newspaper advertisements and other printed publicity where the supplier has sold less than £10,000, inclusive of Tax, of extended warranties in the previous business year.

(4) In this article—

- (a) “business year” means a period of more than six months in respect of which the supplier publishes accounts or, if no such accounts have been published, prepares accounts;
- (b) “newspaper advertisement” includes an advertisement in a magazine or periodical; and
- (c) “printed publicity” includes promotional publications and posters.

Obligation to publish the price of an extended warranty and provide further relevant information: catalogues

4.—(1) Subject to paragraph (3), whenever a supplier publishes the price of a domestic electrical good in a catalogue the supplier shall—

- (a) publish the price and duration of one applicable extended warranty adjacent to the price of the relevant domestic electrical good or, where the price and duration of that applicable extended warranty applies to a range of domestic electrical goods, in close proximity to that range, in a manner that—
 - (i) gives similar prominence to the price of the relevant domestic electrical good;
 - (ii) is clearly legible; and
 - (iii) makes clear that the purchase of an extended warranty is optional;
- (b) publish at the beginning of the catalogue, or where the catalogue is divided into sections, at the beginning of each section offering domestic electrical goods, a statement containing the following information—
 - (i) that further relevant information relating to the purchase of extended warranties offered by the supplier can be found in the catalogue; and
 - (ii) where in the catalogue such information can be found.

(2) A supplier referred to in paragraph (1) shall ensure that further relevant information is published in the catalogue.

(3) In this article “catalogue” means a catalogue in printed form.

Obligation to publish the price of an extended warranty and provide further relevant information: websites

5.—(1) Whenever a supplier publishes the price of a domestic electrical good on a website the supplier shall—

- (a) publish the price and duration of one applicable extended warranty adjacent to the price of the relevant domestic electrical good or, where the price and duration of that applicable extended warranty applies to a range of domestic electrical goods, in close proximity to that range, in a manner that—
 - (i) gives similar prominence to the price of the relevant domestic electrical good;
 - (ii) is clearly legible; and
 - (iii) makes clear that the purchase of an extended warranty is optional;
- (b) publish on the home page of the website a statement containing the following information—
 - (i) that further relevant information relating to the purchase of extended warranties offered by the supplier can be found on the website; and
 - (ii) where on the website such information can be found.

(2) A supplier referred to paragraph (1) shall ensure that further relevant information is published on the website.

Written quotation offers to be kept open for 30 days

6.—(1) Whenever a supplier has provided a written quotation to a consumer pursuant to article 2(1)(d), it shall be unlawful during the relevant period for that supplier to supply (whether directly or on behalf of a third party) that consumer with an extended warranty specified in that quotation unless—

- (a) the consumer is permitted to purchase the extended warranty at the price quoted in the written quotation, or at a lower price;

- (b) the consumer is permitted to benefit from any discount or other incentive contingent on the purchase of the extended warranty, whether that discount or incentive relates to the purchase of such an extended warranty or domestic electrical good; and
- (c) the consumer has acknowledged in writing, prior to the purchase of the extended warranty, that he has received the written quotation.

(2) In this article “the relevant period” means the period of 30 days beginning with the day on which the written quotation is issued.

Cancellation and termination rights

7.—(1) It shall be unlawful for a supplier to supply (whether directly or on behalf of a third party) a consumer with an extended warranty which has an initial duration of more than one year unless—

- (a) the consumer is permitted to cancel the extended warranty, by notice, within the period of no less than 45 days beginning with day on which the extended warranty is purchased, and is permitted to obtain a full refund where no claim has been made under the extended warranty;
- (b) the consumer is permitted to terminate the extended warranty, by notice, at any time after the expiration of the period referred to in paragraph (1)(a), regardless of whether a claim has been made under the extended warranty, and is permitted to obtain a pro rata refund; and
- (c) subject to paragraph (2), the supplier gives notice in writing to a consumer who has purchased such an extended warranty, at least 20 days before the end of the period referred to in paragraph (1)(a), informing the consumer of the right to cancel or to terminate the extended warranty pursuant to paragraph (1)(a) or (b).

(2) Paragraph (1)(c) shall not apply where the price of the extended warranty is £20, inclusive of Tax, or less.

(3) The pro rata refund referred to in paragraph (1)(b) shall be calculated by reference to the remaining period of full unexpired months of protection provided by the extended warranty.

(4) In paragraph (1)(a) and (b)—

- (a) “notice” means a notice given orally or in writing;
- (b) “refund” means a cash refund; a refund on the consumer’s credit or debit card; a refund into the consumer’s bank or building society account; a cheque refund or, where the domestic electrical good and related extended warranty is purchased on a consumer credit agreement, an adjustment to the credit payments.

Requirement to furnish information to the OFT

8. A supplier shall, upon request by the OFT, provide the OFT with information relating to his compliance with this Order.

Directions by the Secretary of State as to compliance

9.—(1) The Secretary of State may give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association—

- (a) to take such steps within his competence as may be specified or described in the directions for the purposes of carrying out, or securing compliance with, this Order; or
- (b) to do or refrain from doing anything so specified or described which he might be required by this Order to do or refrain from doing.

(2) In paragraph (1), “steps” includes steps to introduce and maintain arrangements to ensure that any person carries out or secures compliance with this Order.

(3) The Secretary of State may vary or revoke any directions given.

The Consumer Protection (Distance Selling) Regulations 2000

10. Nothing in this Order shall affect the rights of any consumer under the Consumer Protection (Distance Selling) Regulations 2000(5).

The Electronic Commerce (EC Directive) Regulations 2002

11. The Electronic Commerce (EC Directive) Regulations 2002(6) shall apply to this Order notwithstanding regulation 3(2) of those Regulations.

Date

Parliamentary Under Secretary of State for
Employment Relations, Competition and Consumers
Department of Trade and Industry

draft

(5) S.I. 2000/2334.
(6) S.I. 2002/2013.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes an obligation on suppliers of extended warranties for electrical domestic goods to provide certain information to the consumer before the sale of an extended warranty. It also provides consumers who purchase such extended warranties with certain cancellation and termination rights.

Article 1 defines a number of terms for the purposes of this Order. In particular, a domestic electrical good is defined as a product designed to be connected to an electricity supply or powered by batteries and used for domestic purposes. The Order does not therefore apply to the sale of extended warranties for other goods that are not domestic electrical goods.

Article 1 also defines an extended warranty as a contract for domestic electrical good cover (for example, the cost of repairing or replacing a domestic electrical good) entered into by a consumer for monetary consideration. The Order does not therefore apply to a retailer or manufacturer's guarantee that is provided free of charge.

Article 1 also defines a supplier as a person who offers to supply a consumer with an extended warranty, either directly or on behalf of a third party, at the same time as offering to supply a consumer with a domestic electrical good or immediately subsequent to the sale of a domestic electrical good. The Order therefore applies to a person who supplies an extended warranty for a domestic electrical good either directly, where there will be a contractual relationship, or where that person is acting as an agent on behalf of a third party. The Order does not apply to a person who offers to supply an extended warranty for a domestic electrical good but does not offer to sell the domestic electrical good that relates to the extended warranty.

Article 2 imposes an obligation on the supplier of an extended warranty to display the price and duration of an applicable extended warranty whenever the price of a domestic electrical good to which that extended warranty relates is displayed in store. Where various extended warranty prices and durations could apply, the supplier is only obliged to display one that is applicable.

Article 2 also imposes an obligation on the supplier of an extended warranty to provide the consumer with further relevant information. Further relevant information is defined in article 1 and includes information about the consumer's cancellation and termination rights and the fact that an extended warranty need not be purchased at the same time as the domestic electrical good. Where a consumer goes into the supplier's retail premises, the supplier will have to ensure that leaflets containing this information are available in the store and that the consumer is given such a leaflet before the sale of an extended warranty. Furthermore, except where the value of the extended warranty is £20 or under, the supplier will be obliged to provide a written quotation for an extended warranty on request and in any case before the sale of an extended warranty.

Articles 3 to 5 impose obligations in relation to publishing the price and duration of an extended warranty where the price of a domestic electrical good is published in a newspaper advertisement, promotional publications and posters (unless the supplier has sold less than £10,000 of extended warranties in the previous business year), published in a catalogue or published on a website. Although the obligation to provide information leaflets and written quotations does not apply in such cases, the supplier will nevertheless have to alert consumers to the fact that further information relating to extended warranties offered by the supplier is available, sign post consumers to this information and make sure such information is available. The obligation in relation to catalogues does not come into force until 1st February 2005.

Article 6 provides that where a supplier of an extended warranty has provided a written quotation for the extended warranty, the price quoted and any discounts or incentives tied to the purchase are available for 30 days.

Article 7 ensures that the consumer is given at least 45 days to cancel any extended warranty purchased and receive a full refund (so long as no claim is made) and the right to terminate the

extended warranty at any time after the cancellation period and receive a pro rata refund (vouchers do not constitute a refund). Any notice to cancel or terminate the extended warranty may be given orally. Where the price of the extended warranty exceeds £20, the consumer must also be informed of his cancellation/termination rights in writing at least 20 days before the end of the cancellation period.

Copies of the report of the Competition Commission on which this Order is based (Cm. 6.089) may be obtained from Her Majesty's Stationary Office.

draft

**PROPOSED ORDER REMEDYING ADVERSE EFFECTS SPECIFIED IN
COMPETITION COMMISSION REPORT UNDER THE FAIR TRADING
ACT 1973 ON THE SUPPLY OF EXTENDED WARRANTIES ON
DOMESTIC ELECTRICAL GOODS**

DRAFT REGULATORY IMPACT ASSESSMENT

PURPOSE AND INTENDED EFFECT

ISSUE

The Competition Commission (CC) report on the supply of extended warranties (EW) on domestic electrical goods (DEG)¹ concluded that competition in the market was not fully effective. It identified practices carried out by retailers who sell EWs at point of sale which restrict or distort competition and operate against the public interest.

OBJECTIVE

The CC recommended a series of remedies which they believe, in time, will open up the market for Extended Warranties for domestic electrical goods by introducing steps to encourage stronger competition. Consumers will be given more information about extended warranties and their statutory rights before purchasing so that they will be much better placed to make informed decisions on whether or not they need the EW and whether or not they are buying the EW which offers the best value for money. They will be allowed time to shop around even if they have already made an extended warranty purchase, they will also get greater rights to cancel and receive a full refund, which should encourage switching of EW providers. This will also provide scope and encouragement for new entrants to the market to develop products specifically targeted to service this market.

As providers compete for customers this will exert greater downward pressure on prices and consumers will be offered better terms and conditions. The Secretary of State for Trade and Industry accepted the CC's findings and agreed that it was necessary to take action to remedy those adverse effects. This Regulatory Impact Assessment covers the Statutory Instrument which it is proposed will come into force on 1 December 2004 to enforce the remedies, but with catalogue based offers allowed a later date of 1 February 2005 to comply with specific information provisions set out in the Order.

We welcome views from business and consumer bodies on any practical issues arising from the proposed deferred implementation in relation to catalogue based sales.

RISK ASSESSMENT

The CC's adverse findings identified that the complex monopoly situation includes all retailers of DEGs who sell paid EWs at point of sale and that this situation acts

¹ Competition Commission Report: A report on the supply of extended warranties on domestic electrical goods, CM 6089

against the public interest. EWs sold at point of sale are usually from the retailer selling the DEG. There is also a lack of information about alternative EWs and the reliability of electrical goods or likely repair costs. This means that consumers are not currently in a genuine position to weigh up the merits of competing products and may be pressured into purchasing EWs through “special offers” which are only available when purchased at the same time as the DEG. The CC found that prices of EWs tended to be determined by what the consumer would bear rather than by competition from alternative EWs. They also concluded that prices of EWs did not reflect variations in costs or risks and that retailers were charging more and making more profit than they would in a truly competitive environment.

Profits earned by retailers on EWs, are shown to be consistently and substantially above the cost of capital. This margin reflects the huge competitive advantage of selling EWs at POS; the EW can be sold as an immediate and relevant secondary purchase at a time convenient to the customer. The five major retailers (Dixons, Comet, Powerhouse, Littlewoods and Argos) have in total made profits in excess of the cost of capital in the range of £116 to £152 million per annum, over 5 years to 2002. If profits on EWs for these five retailers had been in line with the cost of capital, prices of EWs could have been on average up to a third lower.

The costs of the proposed remedies are considered modest in relation to the significant consumer detriment identified in the CC report. The main focus of the proposed package of remedies is designed to allow the market to continue but to expose it to more direct and effective competition. This will secure better value for money for consumers opting to purchase EWs. There remains a risk that the proposed remedies will not go far enough to secure that outcome. This is reflected in the more challenging package of remedies proposed in the minority remedy package. Hence it is proposed that the Office of Fair Trading will monitor and review in two years time the effectiveness of the remedies currently and consider whether there is a case for further action.

The Commission also considered decided other remedies² but decided not to pursue them. These included:

- display price of manufacturer’s EW
- tables of comparative information on EWs
- publishing information on EW profitability
- requirement to provide EWs on DEGs sold by other retailers
- requiring annually renewable policies to be offered
- requiring the unbundling of different elements of the EW
- limits to sales incentives
- benchmark products.

OPTIONS

- 1 Do nothing
- 2 Self regulation

² Details of alternative remedies are set out in paragraphs 2.376 to 2.419 of the report

- 3 Ban on sale of EW giving cover for more than one year.
- 4 Securing undertakings from the parties.
- 5 Statutory Instrument.

Option 1: Do Nothing

About 18.5 million EWs were issued in the UK in 2001 with a total value of around £900m. The top 5 EW retailers³ (who account for 80% of paid EW sales) have, over the five years analysed, collectively earned, on average between £116m and £152m more profit each year than they would have earned if their return equalled the cost of capital.⁴ Put another way, **were this market fully competitive**, it is estimated that EW prices could have been, on average, up to one-third lower (though it is not possible to extrapolate these figures to the rest of the market). The do nothing option would result in consumers continuing to pay this high price.

There is very little competition in the market for EWs at present, unlike the market in domestic electrical goods. We reason that making it easier for consumers to shop around, by providing consumers rights to cancel and switch providers, will encourage EW providers to compete for business and produce downward pressure on EW prices.

Option 2: Self regulation.

Self regulation has been tried and shown to be ineffective. The Office of Fair Trading (OFT) investigated the selling of extended warranties in 1994. As a result of that investigation, a voluntary Code of Practice was introduced in 1995, sponsored by the British Retail Consortium. OFT investigated again in 2001 and found that compliance with the voluntary code was poor and self regulation had not worked even though it had been in place for six years. Hence their referral of the market to the Competition Commission.

Option 3: Ban the sale of any EW at Point of Sale giving cover for more than one year.

One option suggested by a minority of the Commission was that there should be a ban on the sale of EWs at point of sale which gave cover for more than one year. This ban would apply for 30 days from the day of purchase of the DEG and would require consumers to shop around effectively making the purchase of longer EWs an entirely separate transaction. This would be in addition to the same information and cancellation requirements as we are proposing.

Option 4: undertakings

The Fair Trading Act 1973 allows for two ways of introducing remedies: undertakings and orders. Undertakings can only be put in place with the agreement of the party or parties concerned. Once accepted, undertakings are legally binding. Given that there are hundreds of retailers offering EW for DEGs in the UK, it is not practical to seek undertakings from them all.

Option 5: Statutory Instrument

³ Dixons, Comet, Powerhouse, Littlewoods and Argos

⁴ Cost of capital is an estimate of the price a company must pay to raise the capital it employs. It reflects the return required by investors to invest in the company's activities rather than elsewhere. For a more detailed explanation of the methodology see paragraphs 2.166 to 22.218 of the Commission's report

An order under the Fair Trading Act 1973 can be imposed on parties and therefore does not pose the same difficulties as using undertakings. We believe that implementing these remedies by way of an order is the sensible way forward given the large numbers of retailers involved.

This will require retailers who sell EWs to:

- show the price of the extended warranty alongside the electrical good, in store, in catalogues and in adverts;
- give consumers information about statutory rights, cancellation rights, details of the warranty;
- give consumers 45 days to cancel their extended warranty and receive a full refund, including a written reminder of this right at a later stage, and the right to cancel subsequently and receive a pro-rata refund;
- offer customers a quotation preserving their right to purchase the extended warranty on the same terms for 30 days if the consumer chooses not to buy it there and then. Any discounts tied to the purchase of the extended warranty should also be available for 30 days; and
- Inform customers about whether or not their warranty provides financial protection in the event of insolvency.

ISSUES OF EQUITY AND FAIRNESS

The CC's recommendations are aimed at addressing the complex monopoly problems identified in their report and the resulting detriment to consumers. The recommendations affect many elements of the industry including those involved in the retail, fulfilment, insurance, underwriting or provision of EWs.

The Office of Fair Trading will monitor and review in two years time the effectiveness of the remedies and consider whether there is a case for further action.

The Order exempts small retailers who sell less than £10,000 worth of EWs in a year from the provision relating to newspaper advertisements. The provisions on advertising do not apply to radio or TV advertisements as the requirements could interfere with the effectiveness of the advert.

The Order does not apply to free Extended Warranties.

BENEFITS

The main beneficiaries of competition in the market will be consumers. If consumers become as discerning in buying EWs as they are in, say, buying mobile phone airtime contracts, this will encourage competition from providers and force down prices. Businesses offering the best value for money EW packages may stand to grow their business as a result of these market opening measures.

COSTS

Environmental costs & benefits

We do not envisage any environmental benefits or costs.

Social benefits and costs

Consumers will benefit if they are more aware of their existing rights. For example, consumers can already get free EWs if they buy DEGs from certain department stores. Some credit cards offer free EWs if a consumer uses it to purchase a DEG. For example, Barclays told the Commission that it has 10.4 million accounts⁵ who are eligible for free EWs.

Economic benefits & compliance costs for business

Manufacturers/retailers/and other EW suppliers/insurers will in future have to provide customers with enhanced information and rights to cancel EW contracts/receive refunds if they later choose to cancel. The main costs we envisage are:

Implementation costs

1) displaying EW prices alongside DEGs in stores or in advertising literature/catalogues. This will require staff time and labelling. Businesses already print catalogues and promotional fliers in the normal course of business. We do not envisage that businesses will have to print new, additional material but simply alter existing material. Costs could be minimal for those businesses which already meet or exceed the stipulated arrangements to supply such rights/information.

2) Mailing out to customers to remind them of their right to cancel the EW prior to the expiry of the 45 day period when a full refund is available (provided no claim has been made). Businesses typically write to customers shortly after purchasing an extended warranty to supply documentation etc. Subject to businesses taking steps to ensure consumers receive the notice in good time to be able to exercise their rights, and businesses ensure reasonable prominence is given to the additional statutory information, we see no reason why businesses should not include this notice within their normal scheduled mailings incurring minimal additional compliance cost.

3) The cost of printing notice letters, quotations and in store information leaflets. Retailers already print information leaflets about the extended warranties they supply. The existing leaflets will have to be modified but with suitable prominence and a competitive product they may be also prove a useful means of attracting additional EW sales covering DEGs offered by other vendors.

4) Maintenance of records. This may be a new issue for retailers (or the insurance product they act for as agents) which do not already have a centralised computer system for recording EWs to allow them to send out reminder notices.

Policy cost

5) The cost of refunding consumers who choose to cancel their EWs and will be entitled to either a full refund on cancellation (within the minimum time which is at least 45 days) or pro-rata refund on termination. This will effectively be an administrative charge which cannot be passed onto the consumer. Those businesses who already offer similar or better cancellation rights to consumers will incur minimal costs.

⁵ 8.4 million Barclaycard customers and 2 million current accounts customers. More details about free EWs can be found in paragraphs 11.99 to 11.107 in Volume 2 of the Competition Commission report on extended warranties CM6089-II

We welcome views from business on the potential compliance costs. It would help to understand how this might breakdown between administrative costs, training costs, printing, postage costs and costs to finance companies if EWs are terminated. In particular, we would welcome information on costs relating to the proposal to defer the requirement for information to be printed in catalogues until 1 February 2005.

SMALL BUSINESS IMPACT TEST

Over 80 per cent of the EW market for DEGs is met by just 5 large retailers. The proposed requirements will also impact on small businesses offering EWs, although the cost should be modest as in many cases it is likely that much of the compliance actions will be undertaken by the insurance business underwriting their extended warranty offer. Again we believe this will primarily involve the staff time to produce and display the additional EW prices alongside the DEG price. In the main smaller retailers do not operate their own service backed warranty scheme but will offer EWs on behalf of insurance companies. The additional mailing/postage costs to advise customers of their cancellation/pro-rata refund rights and maintenance of records is likely to fall to the insurance firm providing the underlying EW rather than the small retail outlet.

Businesses who sell under £10,000 worth of EWs in one financial year will be exempted from the provisions to include EW prices in their advertising materials, although any EW sales in respect of DEGs will still be subject to the cancellation and termination rights.

CONSULTATION AND IMPLEMENTATION

As well as the Competition Commission consulting widely during its investigation, this consultation already takes into account representations from various organisations. In particular we have specifically drafted the order to allow for later compliance in relation to information to be printed in catalogues offering extended warranties. The effect being that the printed information requirements in respect of catalogue based extended warranty offers would only apply to catalogues published after the stipulated date of implementation, although the other consumer rights would apply from the outset. All the provisions will apply to catalogues published after 1st February 2005. We consider the delay in delivering the increased consumer protection in this area, is reasonably balanced by the fact that a catalogue based offer is unlike a Point of Sale offer in a shop. It is reasonable to assume catalogue customers are not exposed to the pressure selling which might apply to Point of Sale offers.

For those businesses to withdraw catalogues, destroy them and print new ones would have cost each major catalogue company £7 million.

COMPETITION

The aim of the remedies is to encourage stronger competition in the market for EWs. The remedies should ensure greater opportunities for consumers to shop around and

secure better value for money and produce downward pressure on prices as providers compete for customers.

We welcome views from business and consumer bodies on the extent they believe these steps will help increase competition in the EW market place.

DEVOLUTION

Competition is not a devolved matter and responsibility rests with the Government of the United Kingdom. This order will apply to England, Scotland, Northern Ireland and Wales.

ENFORCEMENT AND SANCTIONS

Civil proceedings for an injunction or any other appropriate relief may be brought in respect of a failure to comply with the terms of the Order. The breach of any injunction or other order of the Court obtained as a result of such proceedings would constitute a contempt of court. Further, anyone harmed by a breach of the Order may be able to bring civil proceedings against the person responsible.

MONITORING AND REVIEW

It is likely that consumers' complaints would go, in the first instance, to bodies such as Trading Standards. However, the OFT will monitor compliance with the Order and review the effectiveness and benefits of the Order in two years time to see whether it needs to be varied, superseded by a new Order, or revoked. The Secretary of State may then take further action as is appropriate. In accordance with the Enterprise Act 2002, it is envisaged that, in due course, responsibility for enforcing the Order, and the power to release, vary or supersede Orders, will be transferred from the Secretary of State to the Competition Commission.

ANNEX D

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Nick Van Benschoten, DTI Consultation Co-ordinator, Room 723, 1 Victoria Street,
London SW1H 0ET or email nick.vanbenschoten@dti.gsi.gov.uk