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The Supply of Extended Warranties on Domestic
Electrical Goods Order 2005 – results of the public
consultations and the Government's response

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dti

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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.

Public Consultation on The Supply of Extended Warranties on Domestic Electrical Goods Order 2005¹ - Summary of comments and the Government's response

INTRODUCTION AND BACKGROUND

The Government issued the draft Supply of Extended Warranties on Domestic Electrical Goods Order 2004 for consultation on 24 July 2004². The consultation was published on the DTI website and was widely reported in the media at the time. It was also sent to organisations identified by the Competition Commission as being the main extended warranty providers in the complex monopoly situation³.

The draft Order seeks to remedy the adverse effects identified in the Competition Commission report of December 2003. The consultation sought the views of retailers, consumer groups, insurance companies, publishers and other interested parties on the draft Order which contained measures to reform the market for extended warranties (EW) on domestic electrical goods (DEG). The draft Order requires EW suppliers to:

- show the price of the extended warranty alongside the price of an applicable DEG in store, in catalogues, on the Internet and in print adverts;
- give consumers information about statutory rights, cancellation rights and details of the warranty, including whether or not their warranty provides financial protection in the event of insolvency;
- give consumers 45 days to cancel their extended warranty, including a written reminder of this right and the right to terminate at any time and receive a pro-rata refund; and
- offer the EW on the same terms for 30 days if the consumer has requested a written quotation of the EW price. Any discounts tied to the purchase of the extended warranty would also be available for 30 days.

The consultation indicated that the Government intended to implement the provisions in time for the Christmas 2004 sales, subject to a derogation for catalogue retailers who were bound by publication deadlines.

Following this consultation, the Government considered the responses, and issued a revised draft of the Order for a further, 30-day consultation⁴ on 18 November. The consultation attracted input from a wide range of interested parties including retailers, consumer groups, insurance companies, publishers and other interested parties.

RESPONSES RECEIVED

There were 42 responses to the first round of consultation and 23 responses to the second round of consultation. The quality of the feedback was high, with helpful and

¹ URN 05/562 The final version of The Supply of Extended Warranties on Domestic Electrical Goods Order 2005 and the Guidance for Business can be found at <http://www.dti.gov.uk/ccp/topics2/pdf2/ewguidance.pdf>

² URN 04/1388. This can be found at <http://www.dti.gov.uk/ccp/topics2/pdf2/ewcondoc.pdf>

³ The list can be found at Appendix 2.8, Volume 3 of the Competition Commission report: "A report on the supply of extended warranties on domestic electrical goods within the UK", CM6089 III

⁴ URN 04/1897. This can be found at <http://www.dti.gov.uk/ccp/consultpdf/ewcondoc2.pdf>

well-considered comments that have been taken into account in developing the final Order. The Government is grateful to all those who took the time and effort in responding. A list of the organisations whose responses are publicly available, and details of how to view them, is at Annex A.

Additionally, the Government met with a number of stakeholders from the retail and publishing sectors at their request to follow up on points raised in the responses.

This document summarises the substantive issues raised in the responses to the consultations and explains the Government's response to these.

GENERAL VIEWS OF RESPONDENTS

1. Most respondents supported the general thrust of the Order and the policy objectives behind the Competition Commission report, although some respondents were unsure about some specific provisions (see below). Others fully supported the Order as originally drafted. These were mainly consumer groups, retailers offering free extended warranties and those who hoped to break into the extended warranty market in some way. One consumer group expressed concern with changes made for the second consultation; however, a number of other respondents indicated their support for the changes.

Government response

The Government is satisfied that the final Order will remedy the adverse effects identified by the Competition Commission report in a proportionate and fair manner.

2. A large number of retailers expressed concern about the original proposals to implement the recommendations in time for the 2004 Christmas trading. They argued that the timeframe was too short to implement all the recommendations properly, and welcomed the decision to delay implementation until 2005 (although some respondents retained reservations that implementing the provisions relating to websites would still be difficult).

Government response

The Government agreed with these concerns, and hence delayed implementation, now planned for 6 April 2005. The delay itself, however, received some criticism during the second consultation. The Government notes that some retailers began to implement some of the recommendations voluntarily. The Government notes concerns about timing to implement the provisions relating to websites, but considers that the commencement date gives sufficient time for businesses to adapt.

3. The British Retail Consortium (BRC) argued that the recommendations of the Competition Commission should be implemented by self-regulation and broad principles instead of detailed legislation, in line with DTI's consumer strategy.

Government response

The Government notes that self-regulation by a BRC sponsored Code of Practice was tried before in 1995. An Office of Fair Trading market investigation in 2001 found that compliance with the code was poor and that real concerns about competition and

consumer protection still needed to be resolved. The Government therefore agrees with the Competition Commission that a regulatory approach is the most appropriate.

4. Four retailers said that the Order should also apply to retailers who give away free EWs or those who sell stand-alone EWs. One retailer was strongly against any extension in this way.

Government response

The Government notes that the adverse public interest finding by the Competition Commission concerned retailers who sold EWs with DEGs at point of sale, not those who gave away EWs for free or who sold stand-alone EWs. The Government does not therefore propose to extend the Order in this way.

5. Two respondents argued that the word “optional” next to the display price of the EW is unnecessary as it is obvious that EWs are an optional purchase. However, other respondents claimed that putting the price of an EW next to the price of a DEG might confuse consumers into thinking that the EW was a compulsory purchase.

Government response

The Government does not think consumers will be confused into thinking EWs are compulsory. Suppliers will have to put the word “optional” next to the display price of an EW in store but not in catalogues, websites or newspaper adverts if they wish to save space, where retailers can choose to put in the word “optional” if they wish.

SPECIFIC COMMENTS

Article 1

Article 1 sets out general definitions of terms used in the Order.

6. A number of respondents requested clarification of what would class as a DEG and one respondent asked for clarification on whether or not a stand-alone insurance product which only offers cover against theft and accidental damage would come under the definition of an EW.

Government response

If the product does not offer breakdown cover, it does not come under the definition of EW. This is consistent with the Competition Commission’s report. The definition of DEG was clarified following the initial consultation and no further change is considered necessary.

Article 3⁵

Article 3 sets out the requirements for in-store retailers of extended warranties.

⁵ Note that a new Article 2 was inserted into the Order. All Article references refer to the final draft of the Order.

- To display the price and duration of an EW adjacent to the price of the DEG in a clear and legible manner, indicating that the purchase of the EW is optional;
- To make available leaflets giving further information on EWs; and
- To provide a written quotation, either on request or prior to the purchase of an EW.

The first draft of the Order also required the price of the EW to be given similar prominence to the price of the DEG and for a copy of the information leaflet to be provided before the purchase of the extended warranty.

7. Five retailers argued that the original requirement for EW prices, to be given “similar prominence” to DEG prices would confuse consumers.

Government response

The Government agreed with these representations and redrafted Articles 3, 4, 5 and 6 accordingly.

8. Two retailers argued that leaflets and quotations are unnecessary duplication. One preferred only quotations, while the other preferred only leaflets.

Government response

The Government thinks that leaflets should be available in stores as this will ensure consumers have all the information they need about the EWs. Quotations are designed for a different purpose. However, the Government accepts that the requirement that a leaflet be physically given to the purchaser as well as a quotation is unnecessary.

9. One catalogue retailer raised the issue of store checkers and in-store self service payment machines, arguing it would be extremely difficult to change systems to enable the Order to apply in this case. These machines are for consumers to check if an item is in stock or to pay electronically for the item. During the second consultation one respondent queried why these machines should be treated differently to websites.

Government response

Since consumers will have already seen the EW price next to DEG price as they browse in store or look through a catalogue before they decide to make a purchase, the Government agrees that it is not necessary for consumers to see the price of the EW again if they are simply checking if the item is in stock or making a payment with their debit or credit card. The draft Order was amended for the second consultation to ensure the requirement does not apply in these cases. The Government considers the position with regards to these machines is similar to the point on the website when a purchase is being made, where a similar amendment was made (see below).

Article 4

Article 4 imposes a requirement for suppliers to display the price and duration of a relevant EW (if applicable) in newspaper advertisements and other printed publicity. This must be in a clear and legible manner. (The first draft of the

Order contained a requirement for the EW price to be given similar prominence to the DEG price, and for statements that the purchase of the EW was optional and that further information about EWs was available.)

10. A number of organisations, particularly representing the newspaper and advertising sectors, expressed opposition to Article 4 of the draft Order during both consultations. They claimed that this will make such adverts less cost-effective, especially relative to television and radio adverts to which the requirements do not apply, thereby distorting competition in the advertising market. During the first consultation some respondents suggested that Article 4 should be extended to include broadcasters, although this was not repeated, and was opposed by a significant number of other respondents.

Publishers also suggested that Article 4 was peripheral to the remedies because the real detriment the CC identified was the point of sale advantage held by retailers.

Consumer groups stated that they believe Article 4 is an important part of the remedies in ensuring that consumers have access to information so they can make informed choices before buying EWs.

Government response

The Government believes Article 4 is an important part of the package of remedies required to deal with the adverse effects identified by the Competition Commission that is necessary to increase competition in the extended warranties market. It notes that the considered view of the Competition Commission, which the Government still believe carries weight, is that “*effective competition in the supply of extended warranties will not develop if consumers do not know the prices of EWs at the time they are deciding on the DEGs*”. Currently, the first time many consumers find out the price of the EW is at point of sale when they are buying the DEG. Retailers use print adverts to attract consumers into their stores. In future, when consumers see these adverts, they will immediately see how much a retailer charges for an EW on a particular DEG, and be able to compare the charge with how much other retailers charge. This information should help consumers to think about shopping around and comparing prices in advance of purchasing.

The Government introduced flexibility by:

- providing an exemption for retailers who supply less than £10,000 of extended warranties per year; and
- providing flexibility in the way that retailers can comply with this provision by allowing the price and duration of an EW to be advertised in close proximity (rather than adjacent to the price of the DEG) if it applies to a range of DEGs.

The Government then considered whether all the elements of its original proposal in relation to printed advertising were necessary and concluded following the first consultation that certain elements of the original proposal could be revised, by:

- dropping the requirement for EW prices to be given “similar prominence” to DEG prices; and
- dropping the requirement to state that the EW is optional and a statement directing consumers to further information.

The Government does not believe the requirement should be extended to broadcast media as it agrees with the Competition Commission’s reasoning that this could significantly interfere with the effectiveness of broadcast adverts. The Government considers that the different treatment of printed and broadcast advertising is justified. It believes the two forms of media are not perfectly substitutable and notes that advertisers are therefore likely to want to continue to use a mixture of the two means of advertising. It notes that advertisers have already begun to place advertisements in newspapers containing the required information related to extended warranties.

11. One large retailer argued that small retailers who sold less than £10,000 of EWs in a year should not be exempt from Article 4 (displaying price of EWs in adverts). The retailer said that small retailers still benefit from the point of sale advantage.

Government response

The Competition Commission deliberately recommended exempting small retailers from this recommendation because it might be disproportionately onerous. They reasoned that small retailers might only sell a few EWs in a week. The Government agrees with the Competition Commission’s reasoning.

Article 5

Article 5 imposes:

- a requirement to display the price and duration of an EW adjacent to the price of the DEG in catalogues. This must be in a clear and legible manner (reduced from a requirement for similar prominence in the first draft); and
- A requirement to make available in the catalogue further information about EWs.

12. Respondents felt that “clear and legible” was less onerous than “similar prominence”.

Article 6

Article 6 imposes:

- a requirement to display the price and duration of an EW adjacent to the price of the DEG on websites. This must be in a clear and legible manner (reduced from a requirement for similar prominence in the first draft); and
- a requirement to make available further information about EWs on the website.

13. Four respondents argued that the requirement to display EW price should not apply everywhere on websites. The reasoning given for this is that websites offer

consumers the opportunity to compare products on a single page. The retailers argued that the requirement to display the EW price should only be on the page giving a lot of detail about a single product.

Government response

The Government does not agree with this, as the comparison pages enable consumers to make decisions about DEGs, and therefore the Government feels it is crucial that EW prices be included. The Government also notes that in the vast majority of cases, consumers are given an option to purchase the product directly from the comparison page, without going through the main page for the DEG.

14. The Government does note that it would be confusing for consumers to see the price of an EW displayed in situations where they had opted to purchase a DEG but no EW and were simply confirming the purchase of the DEG.

Article 8

Article 8

- Allows a consumer to cancel an EW within 45 days of its purchase and get a full refund;
- Allows a consumer to terminate the EW after that period and get a pro-rata refund; and
- Requires a supplier to give notice of the cancellation and termination rights.

15. During both rounds of the consultation a large number of retailers expressed strong concerns that retailers should be able to charge an administrative fee when someone cancels or terminates an EW.

Government response

The Government is opposed to this, as retailers may set a high fee to deter cancellations and terminations which would act as a barrier to switching. The Competition Commission considered this argument and rejected it. Paragraph 2.391 of the report states that termination charges restrict consumer choice of switching and restrict competition. The Government agrees with the Competition Commission's analysis. Consumers typically pay for the whole EW upfront although they may not see any benefits until the original manufacturer's guarantee has expired. This also restricts the opportunity to switch. Most administrative costs are incurred upfront and claims costs are typically relatively low during the manufacturer's guarantee period for most DEGs.

16. Some respondents argued that the right of a pro-rata termination refund should not apply if consumer has made a claim. This issue was raised during both rounds of the consultation.

Government response

The Government feels that if a consumer has a 3-year warranty, they are paying for 3 years cover. If they claim in year 2, they should be able to claim back the 1 remaining year of cover. However, if suppliers' EWs terminate after a claim, that is up to them

under the EW terms and conditions. The Government has therefore specified that this should be made clear to the consumer in the further information leaflet and quotation.

17. Two respondents argued that the Order should allow refunds to consumers in vouchers.

Government response

The Government agrees with this to the extent that payment for the EW was made in vouchers. The SI was redrafted so that retailers can refund consumers by the vouchers or a credit note if they originally purchased the warranty in this manner. However, if the consumer paid in cash, the retailer cannot refund in vouchers, to avoid retailers locking in consumers.

18. Some respondents requested that in the event of cancellation or termination of an EW, retailers should be able to get back any discounts offered. Sometimes, retailers offer a discount on either the EW or DEG to induce the consumer to buy both.

Government response

The Government's view is that consumers should receive back the price they paid for the EW if they cancel and a pro-rata proportion if they terminate. There is a risk of retailers using linked discounts on DEGs to put consumers off from cancelling or terminating their EWs which would hinder switching and the development of a more competitive market. If retailers want to give discounts with the risk they may not recover them, that will be a commercial decision for them.

Annex A

Responses to the consultation were received from the following organisations and individuals. (Please note that this list excludes responses made in confidence). Copies of the responses may be viewed at the DTI's Information & Library Services Open Government collection in 1 Victoria Street, London, SW1H 0ET. Please contact Ms. Sheung Yee Chan on 020 7215 6618 for further information on viewing the responses.

Responses to first consultation

Advertising Association	
Argos	London Trading Standards Authorities
Association of British Insurers	Mail Order Traders Association
Association of Manufacturers of Domestic Appliances	MFI
AXA Insurance	National Consumer Federation
British Retail Consortium	Newspaper Society
Alan Bush	Periodical Publishers Association
Buy As You View	Powerhouse
Steve Coppard	Richer Sounds
Dixons	Sennocke International Insurance Services
Domestic & General Group plc	SKY
Durham County Council Trading Standards	Small Business Service
General Insurance Standards Council	Society of Chief Officers in Trading Standards in Scotland
IGI Insurance	Trading Standards Institute
Institute of Practitioners in Advertising	Dr Christian Twigg-Flesner
Interactive Advertising Bureau	USP Strategies plc
Jessops Group	Which?
John Lewis	Yahoo! Europe
LACORS	

Responses to second consultation

Advertising Association	ITV
Argos	Jessops Group
Association of British Insurers	LACORS
British Retail Consortium	Newspaper Society
Buy As You View	Periodical Publishers Association
Channel 5	Powerhouse
Dixons	Redcats
Domestic & General	Telewest
Institute of Practitioners in Advertising	Dr Christian Twigg-Flesner
Interactive Advertising Bureau	Which?

End

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Consumer & Competition Policy Directorate

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