

2005 No. 37

COMPETITION

The Supply of Extended Warranties on Domestic Electrical Goods Order 2005

<i>Made</i> - - - -	<i>11th January 2005</i>
<i>Laid before Parliament</i>	<i>12th January 2005</i>
<i>Coming into force</i> - -	<i>6th April 2005</i>

Whereas the Director General of Fair Trading(a), in exercise of the power conferred on him by sections 47(1), 49(1) and 50(1) of the Fair Trading Act 1973(b) (“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”(c) (“the Competition Commission Report”);

Whereas the Secretary of State, in accordance with section 91(2) of the Act(d), published a notice on 18th November 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 20th December 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(e), 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 2005.

(2) This Order shall come into force on 6th April 2005.

(3) In this Order—

(a) Pursuant to section 2 of the Enterprise Act 2002 (c.40) the functions of the Director General of Fair Trading have now been transferred to the Office of Fair Trading and the office of the Director has been abolished.
(b) 1973 c.41.
(c) Cm. 6089.
(d) Section 91 was repealed by the Enterprise Act 2002, Schedule 26 but, pursuant to Schedule 24, paragraphs 14 and 19, of that Act and SI 2003/1397 (“the saving provisions”), it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 Fair Trading Act 1973.
(e) Sections 56 and 90 and Schedule 8 were repealed by the Enterprise Act 2002, Schedule 26 but, pursuant to the saving provisions (mentioned in footnote (d) above), they continue to apply in respect of monopoly references made before 20 June 2003 under section 50 of the Fair Trading Act 1973.

“domestic electrical good” means a product designed to be connected to an electricity supply or powered by batteries and used for domestic purposes, but does not include watches, jewellery or fixed installations (other than integrated appliances);

“domestic electrical good cover” means cover which at least provides cover against the cost of repairing or replacing a domestic electrical good in the event of a breakdown and which may also provide additional cover against eventualities such as accidental damage, loss or theft and assistance in setting up and operating 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 indicating in general terms—

- (a) the relevant statutory rights of a consumer relating to the purchase of a domestic electrical good and where further information may be obtained in relation to such rights,
- (b) that extended warranties may be available from other persons,
- (c) that household insurance may be relevant to the purchase of a domestic electrical good,
- (d) that an extended warranty does not have to be purchased at the same time as a domestic electrical good,
- (e) any cancellation and termination rights pursuant to article 8,
- (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 going out of business, and
- (g) whether or not an extended warranty offered by the supplier will be terminated in the event of a claim being made;

“offer” includes an invitation to treat;

“provider” means the person who enters into a contract with a consumer for the provision of 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 (to which that extended warranty relates) or immediately subsequent to the sale of a domestic electrical good (to which that extended warranty relates); and

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

(4) For the purposes of articles 3 to 6, the price and duration of an extended warranty that is applicable to a range of domestic electrical goods shall be treated as displayed, advertised 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.

Scope of Order

2. Article 8 (cancellation and termination rights) shall not apply to the supply of extended warranties that are distance contracts to which the Directive 2002/65/EC of the European Parliament and of the Council concerning the distance marketing of consumer financial services^(a) applies.

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

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

- (a) subject to paragraph (2), display the price and duration of one applicable extended warranty adjacent to the price of the relevant domestic electrical good or, where the price

(a) O.J. No L 271, 9.10.2002, p.16.

and duration of that applicable extended warranty apply to a range of domestic electrical goods, in close proximity to that range, in a manner that—

- (i) is clear and legible; and
 - (ii) 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) subject to paragraph (3), provide a written quotation for an extended warranty in accordance with paragraph (4)—
- (i) upon request by a consumer if the request is made at the same time or immediately subsequent to the sale of the domestic electrical good to which the extended warranty relates; and
 - (ii) in any case before a consumer purchases an extended warranty if that purchase is made at the same time or immediately subsequent to the sale of the domestic electrical good to which the extended warranty relates.

(2) Paragraph (1)(a) shall not apply where the price of the domestic electrical good is displayed on—

- (a) a device used for ascertaining whether a domestic electrical good is in stock; or
- (b) an automated self-service machine used for purchasing a domestic electrical good.

(3) Paragraph (1)(c) shall not apply where—

- (a) the price of an extended warranty is £20 (inclusive of Tax) or less; or
- (b) the extended warranty is purchased through an automated self-service machine.

(4) The written quotation referred to in paragraph (1)(c) shall prominently state—

- (a) the price and duration of the extended warranty and the domestic electrical good to which it relates;
- (b) that the extended warranty can be purchased at the price quoted in the written quotation for a period of 30 days (or more if that is the case) beginning with the day on which the written quotation is issued;
- (c) that extended warranties may be available from other persons;
- (d) that the extended warranty does not have to be purchased at the same time as the domestic electrical good to which it relates;
- (e) the consumer's cancellation and termination rights pursuant to article 8; and
- (f) whether or not the extended warranty will be terminated in the event of a claim being made.

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

Obligation to advertise the price of an extended warranty: newspaper advertisements and other printed publicity

4.—(1) Subject to paragraph (2), whenever a supplier advertises the price of a domestic electrical good in a newspaper advertisement or in other printed publicity, the supplier shall advertise 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 apply to a range of domestic electrical goods, in close proximity to that range, in a manner that is clear and legible.

(2) 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.

(3) 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

5.—(1) 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 apply to a range of domestic electrical goods, in close proximity to that range, in a manner that is clear and legible;
- (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;
- (c) ensure that further relevant information is published in the catalogue.

(2) 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

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

- (a) subject to paragraph (2), 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 apply to a range of domestic electrical goods, in close proximity to that range, in a manner that is clear and legible;
- (b) ensure there is a link on the home page of the website, and on each introductory page offering domestic electrical goods, directing consumers to further relevant information relating to the purchase of extended warranties offered by the supplier; and
- (c) ensure that further relevant information is published on his website.

(2) Paragraph (1)(a) shall not apply if the price of a domestic electrical good is published on the website after the consumer has selected that domestic electrical good for purchase.

Written quotation offers to be kept open for 30 days

7.—(1) Whenever a supplier has provided a written quotation to a consumer pursuant to article 3(1)(c), 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 extended warranty or to the domestic electrical good specified in the written quotation; 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

8.—(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 45 days beginning with day on which the extended warranty is purchased, and is permitted to obtain a full refund of the price paid where no claim has been made under the extended warranty;
- (b) subject to paragraph (2), 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 valid claim has been made under the extended warranty, and is permitted to obtain a pro rata refund of the price paid; and
- (c) subject to paragraph (3), 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)(b) shall not apply where the extended warranty terminates on the making of a claim.

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

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

(5) The supplier shall not take into account any discounts which were linked to the purchase of the domestic electrical good to which the extended warranty relates when providing a full refund or pro rata refund pursuant to paragraph (1)(a) or (b).

(6) In paragraph (1)(a) and (b)—

- (a) “notice” means a notice given orally or in writing; and
- (b) “refund” does not include a refund in vouchers or credit notes unless payment or partial payment for the extended warranty was made in vouchers or credit notes and only to the extent of such payment.

Requirement to furnish information to the Office of Fair Trading

9.—(1) A supplier or provider shall, upon request by the Office of Fair Trading in writing, furnish the Office of Fair Trading with any information of the kind described in paragraph (2).

(2) For the purposes of paragraph (1) the information is information which is necessary for monitoring compliance with this Order and which the supplier or provider (as the case may be) holds.

Directions by the Secretary of State as to compliance

10.—(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 under this article.

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

11th January 2005

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes an obligation on suppliers of domestic electrical goods, who also supply extended warranties for those 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 2 provides that the cancellation and termination rights specified in Article 8 of the Order do not apply in relation to extended warranties that are distance contracts to which the Directive 2002/65/EC concerning the distance marketing of consumer financial services applies.

Article 3 imposes an obligation on in store suppliers 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 (other than on a stock checker device or automated self-service machine), in a manner that is clear and legible, and makes clear the purchase of the extended warranty is optional.

Article 3 also imposes an obligation on in store suppliers to provide the consumer with further relevant information including information about the consumer's cancellation and termination rights under the Order and the fact that an extended warranty need not be purchased at the same time as the domestic electrical good. It imposes an obligation on in store suppliers to provide leaflets containing this information and, except where the value of the extended warranty is £20 or under or where the extended warranty is purchased through an automated self-service machine, an obligation to provide a written quotation for an extended warranty on request and in any case before the purchase of an extended warranty, so long as that request or purchase is made at the same time or immediately subsequent to the sale of the domestic electrical good to which it relates.

Articles 4 to 6 impose obligations in relation to advertising/publishing the price and duration of an extended warranty where the price of a domestic electrical good is advertised 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 the supplier's website.

Article 7 makes it unlawful for a supplier who has provided a written quotation pursuant to article 3 to supply an extended warranty specified in the quotation unless the price quoted and any discounts or incentives tied to the purchase of the extended warranty are available for at least 30 calendar days and the consumer has acknowledged in writing the receipt of the written quotation before purchase of the extended warranty.

Article 8 imposes an obligation on the supplier to provide a consumer with the right to cancel an extended warranty within the period of 45 calendar days 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. Where the price of the extended warranty exceeds £20, the article imposes an obligation on the supplier to inform the consumer of his cancellation/termination rights in writing at least 20 calendar days before the end of the cancellation period.

Article 9 obliges a supplier, or the person who has the contract with the consumer (who may not be the supplier) to provide the Office of Fair Trading with information that they hold which is necessary for monitoring compliance with this Order.

Article 10 enables the Secretary of State to give directions in the event of non-compliance with the Order.

Copies of the report of the Competition Commission which led to the making of this Order (Cm. 6089) may be obtained from The Stationery Office Limited.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Consumer and Competition Policy Directorate, 1 Victoria Street, London SW1H 0ET. A copy can also be found at www.dti.gov.uk/ccp/topics2/pdf2/ewria.pdf.

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