

## TELECOMS

Telecoms operators are falling into the same trap of mis-selling as energy companies did ten years ago • Peter Franklin sees history repeating itself

# Seeing double

**T**elecoms complaints levels are rising. And it is not only customers that are complaining about poor tactics on the doorstep and on the phone – the incumbent, BT, is adding its voice to the clamour. The increasing volume of dissatisfaction has not yet reached intolerable levels, but if it does, the regulator will not long be able to ignore the demand for regulatory action. As it is, regulator Ofcom's preferred approach is to try and encourage the telecoms sector to clean up its act by itself.

What Ofcom does not want is a repeat performance of what happened in energy. Neither does it want to have to micro-manage the industry with an externally imposed solution. So, to date, it has taken a light-touch approach and obliged suppliers to establish a Sales Code of Practice conforming to general guideline standards. The industry's response appears patchy, with most (although by no means all) companies publishing codes on their websites. Worse still, no structure is in place to ensure codes are adhered to in practice, so the likelihood is that they will prove ineffectual despite the regulatory requirement for compliance.

For many people in the utility industry, this situation will evoke an uncomfortable feeling of *deja vu*. Take a look back at the experience of competition in the energy sector and you have the same story, word for word.

Back in 1996, mis-selling hit the headlines when Sweb was hauled over the coals by the Office of Fair Trading for door-to-door malpractice. Amerada called for the door-to-door sales channel to be closed down. In 1997, the volume of complaints had grown and the regulator pressed the industry to take action, so a few suppliers led by British Gas drew up a voluntary code under the auspices of the Association of Energy Suppliers (AES). The effect was zero. The code was never adopted as an industry standard because a number of key suppliers saw the initiative as a ruse by the incumbent to close the only effective sales channel to market – and thus stifle competition.

Those that did sign up to the code took advantage of a "quality" logo in their marketing literature but saw no need to put in place the independent audit and monitoring to assure compliance with it.

The situation continued to get worse and the clamour for regulatory intervention (including pressure from repeated "questions in the House" by MPs) grew stronger until the last quarter of 2002 when an event that changed the industry took place. London Electricity was fined £2 million by the regulator for failing to exercise sufficient internal control on sales practices. The world changed – the cost of not managing standards had risen to the point where the industry had to do

something. Everyone realised it could be them next. They also recognised the additional risk of tighter regulatory control through licence modifications, which in turn would increase the possibility of financial penalties.

By the first quarter of the next year, 2003, all the main suppliers had bought into a new, more robust code of practice and the AES had become an effective organ of change. By the middle of 2003 an independent compliance regime was in place run by energy market and audit specialists EnStra.

**It is likely that codes will prove ineffectual despite the regulatory requirement for compliance**

EnStra's role was to create an audit and monitoring framework to check that each supplier had internal processes in place and working to ensure compliance with each clause and sub-clause of the industry code. Over the following 18 months EnStra worked with all the main suppliers identifying areas of compliance and identifying opportunities for improvement.

More than 120 improvement areas were identified in the first round of audits, and 12 months later these had been distilled down to three. The impact on complaints levels was dramatic. After 18 months of operation, complaints had halved.

At that point the Energy Retail Association (ERA) took code management in house and industry self-regulation became business as usual. Today, complaints levels are less than 20 per cent of what they were prior to effective self-regulation.

For utility companies, this has not only delivered brand and reputational benefits but also tangible savings in complaints handling costs and reduced registration, billing and customer care costs as the quality of sales has improved over time.

More importantly, the industry had taken control of the change agenda, which was a win

for the regulator as well. The regulator had always supported a self-regulation solution over an externally imposed regime. As the timeline shows, the very fact that the industry had put in place an effective self-regulatory mechanism was lessening the severity of changes being considered to the overall licensing regime.

Another major advantage of an industry-designed and administered solution was that utilities could decide what information would be kept confidential, what shared across the industry, and what released outside the industry group. The outside world was only interested in whether the solution worked, that is, whether complaints fell. In an imposed solution this would have been very different with much more information being forced into the public domain.

Where is the telecoms industry today? It appears to be where the energy sector was in 1997. There is no standard code, no code management mechanism and complaints are rising. So will we see a repeat performance in telecoms, or will the industry take the opportunity to learn from hindsight?

Unfortunately, all the portents are that history will have to repeat itself, and the telecoms sector will not be able to leapfrog the energy sector by using the lessons learned over the past ten years.

The reason for this pessimism is that from the discussions we have had with the industry, companies do not accept that the benefits are big enough to prompt action. This applies to the internal cost and brand benefits of industry code administration, which arise from the adoption of a rigorous self-regulatory approach, as well as the advantage of taking control of the change agenda, which leaves the incumbent in the driving seat and potentially forces Ofcom to take intrusive action against its will.

Second, only the costs of doing something positive are visible. It costs money to set up and manage an industry code, even though the cost for each player is minimised by doing this collectively rather than individually. So while it may be cost-effective to set up self-regulation, it is a cost that can be avoided by doing nothing.

The cost that is currently hidden is the cost of not creating the industry initiative – namely the fines. The London Electricity fine cost more than the total cost of code administration, from its inception to the present day, for all energy code members together. Unless the perception of the other benefits changes, it may well take fines to convince the industry that self-regulation is a worthwhile investment.

Third, feedback to us reveals that each industry participant believes, rightly or wrongly, that their own house is in order. The prob-



### Is anybody listening? Rising levels of complaints in the telecoms sector will force Ofcom to take action unless the sector puts its own house in order

lem is someone else's, so why should they bear the cost?

Finally, there is no single industry grouping responsible for telecoms retailing. The equivalent of the ERA, which subsumed the AES and now manages the code, does not exist in telecoms.

As an external observer, it seems strange that the industry does not simply take up the frameworks and models that have been so successful in energy. All the benefits are there

waiting to be reaped. And given the overwhelming similarity between the telecoms code and the energy code, the costs of setting up an effective self-regulatory regime would be lower than they were in energy – since the wheel has already been built, no re-invention is necessary.

However, all the signals from the market are that this is not going to happen. Paradoxically, while light touch regulation and effective self-governance would appear to be a win-win for the Ofcom and nearly every tele-

coms company, the only way to get there, on the basis of the experience of energy, is heavy-footed regulation with substantial fines to prompt a change of attitude.

It is said that a clever man learns from his own mistakes, a wise man from the mistakes of others. The energy industry was clever, will the telecoms industry take the opportunity to be wise? ■

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