

'Price Indexation Clauses' in Telecoms contracts

BEREC Workshop on End-User Rights

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What are *'Price Indexation Clauses'*?

'Price indexation clauses' are clauses which empower providers to increase the charges and fees of their services in accordance with an objective consumer price index compiled by a public institution. These clauses state that end-users will not be entitled to terminate their contract without incurring the applicable early termination fees ('ETFs') when such increases are implemented.

Background – CJEU Decision

This subject matter was at the centre of a ruling decided by the ‘CJEU’ in response to a question referred by the Supreme Court of Austria, following a dispute between the Austrian Consumers' Association and A1 Telekom Austria AG. The CJEU ruled that:

*‘Article 20(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that a **change in charges** for the provision of electronic communications networks or services, **resulting from the operation of a price adjustment clause contained in the standard terms and conditions** applied by an undertaking providing such services, the term providing that such a change applies in accordance with changes in an objective consumer price index compiled by a public institution, **does not constitute a ‘modification to the contractual conditions’ within the meaning of that provision, which grants the subscriber the right to withdraw from the contract without penalty**’.*

Background – Local Scenario

Two (2) of the three (3) largest local service providers introduced ‘*price indexation clauses*’ in some of their contracts’ between 2022 and 2023. This prompted the MCA to publish a consultation which proposed a number of protection measures to be adhered to by publicly available ECS providers (other than providers offering NI-ICS and M2M services). The MCA received submissions from the:

- Consumer Association Malta (CAM)
- Consumer Affairs Council (CAC)
- Office for Consumer Affairs (OCA)
- Three (3) leading local service providers (namely GO plc, Epic Communications Ltd and Melita Ltd)

A **Final Decision Notice** was published by the MCA on the **8th of December 2023**.

Alternative Proposal Received During the Consultative Period



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Proposal for an Alternative Approach

Proposal submitted by one (1) respondent as an alternative to the measures proposed by the MCA:

'Any increases in charges and fees implemented by providers in accordance with 'price indexation clauses' are capped by a maximum increase of 4.9%. Charges and fees of service/s cannot increase by more than 4.9% even if the inflation rate of an objective consumer price index compiled by a public institution exceeds 4.9%.'

The MCA considered that this proposal does not address its concerns in view that:

- The MCA is not empowered to establish maximum increases/decreases of retail charge/s and fee/s
- The proposal does not contemplate the possibility that charges and fees decrease if the consumer price indexes compiled by public institutions record a deflation
- The proposal fails to provide details on the methodology used to determine the 4.9% increase capping
- This proposal does not provide certainty and does not allow comparability of charge/s and fees

MCA's Decision on *'Price Indexation Clauses'*

Applies to providers of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services

The protection measures also apply when service/s are provided to end-users that are microenterprises, small enterprises or not-for-profit organisations, unless such end-users have explicitly agreed to waive all or parts of those provisions.

Summary of MCA's Decision

Transparency

- Service providers' websites must state in a clear and distinct manner that services plans published on their website are subject to *'price indexation clauses'*
- Service providers' must include information about *'price indexation clauses'* in contract summaries beneath the heading titled *'Other relevant information'*

Consent

- Before agreeing to a contract, providers must obtain a consent from consumers (either a signature or a tick box) indicating that consumers are aware that the contract includes a *'price indexation clause'* (Applicable to service/s plan which mandate a minimum contractual period or are subject to early termination fees)

Contract Duration

- Contracts including *'price indexation clauses'* shall not mandate a commitment period of more than 6 months

Noteworthy Developments Following MCA's Publication of its Decision Notice



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Developments in the Local Market

- During the first week of January 2024, the only two (2) local providers which were including *'price indexation clauses'* in their contracts stopped including such *'price indexation clauses'* in the contracts being offered to new subscribers
- These two (2) providers also indicated that they intend not to apply or enforce the *'price indexation clauses'* included in past contracts concluded with end-users

THANK YOU



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