‘Price Indexation Clauses’ in Telecoms contracts

BEREC Workshop on End-User Rights

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“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.
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’.
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
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
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