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The MCA introduces new measures on 'Price Indexation Clauses in Telecoms Contracts' to be adhered to by providers

The Malta Communications Authority (MCA) is pleased to announce the introduction of new measures governing 'Price Indexation Clauses' in telecoms contracts, some of which become effective with immediate effect.

Introduction

In recent months, several providers have introduced clauses in subscriber contracts allowing them to adjust charges or fees based on an objective consumer price index compiled by a public institution. These clauses, referred to as 'price indexation clauses', restrict consumers from terminating contracts without incurring early termination fees upon such adjustments.

Context

Providers have the flexibility to modify the contractual conditions of consumer contracts, including the possibility to increase retail prices, by granting consumers the right to terminate their contracts without penalties. This matter was central to a ruling by the Court of Justice of the European Union, which Court determined that price adjustments resulting from operating a price indexation clause contained in a contract, do not constitute a contractual modification warranting the legal requirement to provide consumers the right to withdraw from their contract without early termination fees.

Key Concerns

Expressing serious concerns, the MCA highlights:

- Lack of consumer awareness about these clauses.
- Potential misunderstandings of their impact.
- Uncertainty about total costs throughout the contract period.
- Consumer challenges with unpredictable increases in fees and charges.
- Hindrance to consumers' ability to compare tariff plans, distorting effective competition in the market.

Public Consultation and Stakeholder Involvement

On 25th August 2023, the MCA initiated a public consultation on proposed consumer protection measures. Submissions were received from six stakeholders, including Consumer Association Malta, Consumer Affairs Council, Office for Consumer Affairs within the Malta Competition and Consumer Affairs Authority, EPIC Communications Limited, GO plc, and Melita Ltd.

Decision Notice

After careful consideration of stakeholder feedback, the MCA published a Decision Notice on 7th December 2023, mandating requirements for providers of internet, TV, mobile, and fixed telephony services.

Noteworthy requirements include:

- Maximum contract duration of contracts with 'price indexation clauses' limited to six (6) months, effective from 8th January 2024.
- Providers may offer plans with a commitment period of up to twenty-four (24) months, provided they exclude 'price indexation clauses'.
- Providers must obtain explicit consent from consumers before concluding contracts with 'price indexation clauses,' effective from 8th March 2024.
- Enhanced transparency obligations for contracts and websites publicising plans with price indexation clauses, effective from 8th March 2024.

In relation to Existing Contracts

The MCA addresses existing contracts with price indexation clauses (i.e. contracts entered into before the publication and/or coming into force of the Decision):

- After six (6) months from the contract signing date, consumers have the right to terminate contracts without incurring early termination fees if providers implement price changes based on the indexation clause.
- While enforcing this requirement within the the first six (6) months from the contract signing date poses some regulatory challenges, the MCA strongly encourages providers to offer consumers the option to rescind contracts without penalties in case of price revisions due to indexation clauses, made during this period. The Authority considers that such a voluntary undertaking by providers would be consistent with the objective of ensuring fair and transparent contractual practices in the sector.

Extended Consumer Protection Measures

The consumer protection measures listed in the Decision Notice have been extended to cover also end-users that are microenterprises, small enterprises, or not-for-profit organizations unless such end-users have explicitly agreed to waive all or parts of those provisions.

For detailed information, please refer to the complete Decision Notice on the MCA's [website](#).