Prohibiting inflation-linked price rises

CCUK response – February 2024

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About CCUK

1. Comms Council UK is a membership-led organisation that both represents and supports telecommunications companies that provide services to business and residential customers in the UK. We keep Britain talking in its various guises by providing or reselling voice services over data networks (VoIP) as well as other "over the top" applications including instant messaging and video.

2. The membership is a mixture of network operators, service providers, resellers, suppliers and consultants involved in a sector that is diversifying rapidly. CCUK represents its members at a policy level, builds coalitions to collaborate on industry initiatives and provides a platform to help members prepare for change, learn about new trends and develop new business relationships.

Summary

3. In this response, we bring Ofcom's attention to several issues of practicality:
   - The reliance on the existing opt-out for small businesses in GC C1.1 in the new proposed condition creates a somewhat blunt instrument and awkward sales process. We consider that the approach needs to be finessed to make it workable in practice, like the Contract Information/Summary opt-out;
   - The requirement to fix price increases at the point of sale is likely to increase prices to consumers in the long term – just as fixed rate energy supply or mortgages tend to cost the consumer more in the long term;
   - There is no evidence about any harm in the business sector to justify Ofcom's intervention; and
   - There is no basis upon which to restrict the medium of exchange in telecommunications contracts to consumers and businesses and limit it solely to British Pounds Sterling.

4. Our members have a diverse range of views on the merits or otherwise of certain retail pricing strategies. What is represented here is the high-level consensus – individual members will make their own, independent, representations where appropriate.

Unworkable Sales Process for Businesses

5. The wording of the proposed General Condition ("GC") C1.3 has a welcome opt-out for business-to-business transactions (in the ten employees or fewer market). However, by not revisiting the GC which governs its scope (at GC C1.1(a)), the requirement to "[draw] a business customers attention in a clear and comprehensible manner (including during a sales call or other verbal sale such as an in-store sale)" is unworkable.

6. CCUK is unsure if Ofcom is suggesting that a general waiver need be signed by a prospective customer simply to talk to a provider of PECS about potential pricing for a service, and if a similar situation would apply to advertising business services. We note the existence of various sets of binding advertising guidance on the matter of price rises, but further note that it does not apply to business transactions.

7. We do not see why the existing requirement to agree otherwise (such as that used in a Contract Summary or Contract Information) is unsuitable for price variation clauses. We also do not see why Ofcom considers this to be such an acute need (noting that businesses often buy services on a three or even five-year term and, in our members' experience, often anticipate indexing) to require interference in the prospecting and sales process.

8. CCUK notes that Ofcom has adduced no evidence of any harm in the business-to-business sector. While the construction of its survey may have meant it has counted sole traders as consumers by not expressly qualifying this (which we say is an error – Ofcom's questionnaires are flawed by not asking whether the respondent is a business or not), there is no evidence regarding the state of affairs beyond sole traders.

9. A consumer buying an iPhone on a 2-year contract is a very different proposition to a boutique firm of professionals buying an Ethernet circuit with thousands of pounds of excess construction charges amortised over a five-year term. One cannot assume, as Ofcom seems to default to, that a member of the public in a high street shop is identical to a business buyer of considerably more complex services.

10. This means that Ofcom has no basis to determine (i) that there is a need to intervene in business, nor (ii) that the intervention is proportionate (and thus lawful) by extending it to small business and not for profit organisations – let alone by interfering in the basis upon which a provider of PECS can have an initial call with a prospect.

11. Aside from Ofcom needing to have an evidence base to satisfy the statutory tests to impose the new GC on business transactions, we consider that the obligation would be far less onerous (which is to say, more proportionate) should the obligation be a requirement to draw the attention of the customer to the clause *prior to being bound by the contract*. This means that the price change can be on the order form, or (if the right is not waived) as part of the established Contract Information/Contract Summary documents.

Risk of Consumer Inflation

12. Ofcom is correct that the larger CPs are better-placed to forecast inflation than the average consumer. However, that is a very relative statement: it is not an exact science, with massive levels of uncertainty and myriad predictions proved wrong. Quite how Ofcom anticipates CPs to do any better than the Treasury and central bank relative to a consumer is a flawed position to take.

13. By CPs taking the risk of not being able to keep contracts at the same real-terms value over the life of the contract, CPs will invariably include a risk premium in their fixed pricing. Given that substantial input costs into their propositions (noting business contracts on average are longer than the 2-year maximum for consumers) are indexed by the *regulator* using CPI, this is not just about forecasting their own internal overheads either.

14. Risk premiums are a common tool and usually work out in favour of the one fixing the rate. It is generally well-known that variable rate mortgages, for example, are cheaper than fixed rate in the long term.

15. That risk premium will invariably be margin-augmenting, with CPs fixing the future price at a rate above forecast CPI +3.9% leaving the consumer paying more for certainty. Indeed, this is the very justification used to "sell" fixed rate tariffs in various sectors, such as energy and financial services.

16. In any event, Ofcom needs to be conscious that the larger wholesale CPs may be able to attempt to forecast inflation, but smaller retail CPs might not. Wholesale contracts are exempt from Ofcom's proposals (and indeed BT is encouraged to use CPI by Ofcom in indexing wholesale prices), meaning that smaller retail CPs must also attempt the same mathematics. There are over one thousand of these smaller retail CPs, many of which are themselves microbusinesses (which, if acting as an end user not a reseller would be deserving of protection according to Ofcom), procuring services from a small handful of wholesalers.

17. The resulting outcome is a competitive distortion (potentially not compatible with Ofcom's Section 3 objectives), as smaller retail CPs introduce a higher risk premium rendering themselves less competitive.

18. The solution to this is for market reviews to be redone with increases measured in pounds and pence (or currency equivalent). Ofcom, being part of the apparatus of Government, is even more equipped than those it regulates to forecast CPI, and therefore can derisk the issue of competitive distortions and consumer inflation by setting charge controls in pounds and pence and not CPI +/-x%.

19. There is a risk of the representation bias of record (although reducing) inflation creating a policy "knee-jerk" reaction, which ultimately costs consumers more in the long term. We note that this effect was not addressed by Ofcom in the Consultation.

Restricting the medium of exchange

20. In the United Kingdom, there is no law that fixes the general medium of exchange to Pounds Sterling. The only legal basis we are aware of is the very narrow law on legal tender with respect to what can and cannot be refused as settlement of a debt.

21. Ofcom's proposal seeks to –with no evidence as to whether the provision of PECS in a medium of exchange other than Pounds Sterling causes harm – restrict the consumer and small business market from trading in anything else. That would exclude US Dollar (which some business products are denoted in, and increasingly travel SIMs use), cryptocurrency (including, if the Bank of England follows through on their consultations, a UK stable coin), Nectar Points, Air Miles, etc. While we understand the sentiment behind the "pounds and pence" requirement by forcing the prices to be calculated and expressed as such, the consequence is an significant restriction in the medium of exchange in the UK.

22. The simple solution is to state, in the new proposed GC C1.3(a)(iii) *"or, if the contract is denominated in a medium of exchange other than British Pounds Sterling, the total payable in that medium of exchange with the Subscriber not having to perform any further calculation."*

23. As noted above, if CPs currently providing services in US Dollar or other currencies are forced to take the foreign exchange risk, the resulting risk premium is likely to be to the long-term detriment of the consumers.

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