

Ofcom consultation on prohibiting inflation-linked price rises - response from the Competition and Markets Authority

Background

1. The CMA is the UK's principal competition and consumer authority. It is an independent non-ministerial government department and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. The CMA has a cross-economy, UK-wide role. For some of the CMA's functions (enforcing competition and consumer law and conducting market studies), the CMA shares the power to take action in specific sectors with the relevant sector regulator (known as 'concurrency'). In these contexts, the CMA and sector regulators work in partnership, and we aim to coordinate and support each other in our work.
3. Ofcom is one of the sector regulators with which the CMA shares these concurrent powers. As a sector regulator, Ofcom also has powers and tools to regulate within its remit that are not available to the CMA – this includes setting and making changes to its '[General Conditions](#)' through which Ofcom intends to prohibit inflation-linked price rises.² While the CMA considers mid-contract price rises in the telecoms sector as principally a matter for Ofcom, the CMA has previously given thought to this issue in its capacity as an enforcer of consumer protection law.³
4. This response to [Ofcom's consultation on prohibiting inflation-linked price rises](#) first provides some background on inflation-linked price rises and then responds to Ofcom's proposals. In summary, the CMA welcomes the improvements Ofcom's proposals make to the current situation and

¹ The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² Ofcom's General Conditions of Entitlement are the regulatory conditions that all providers of electronic communications networks and services must comply with if they want to provide services in the UK.

³ See in particular the CMA's response to a previous consultation by the ASA, referred to at paragraph 5 below.

encourages Ofcom to keep under consideration whether any further action is needed to protect consumers and promote competition.

Inflation-linked price rises

5. The CMA has previously set out views on the requirements of UK consumer protection law in the context of mid-contract price rises, as they are currently used in broadband and mobile services, in a consultation response to the Advertising Standards Authority.⁴ These views have regard to relevant provisions in the Consumer Rights Act 2015 which deal with unfair contract terms and notices; Schedule 2 to the Act which lists consumer contract terms that may be unfair in some circumstances; the Consumer Protection from Unfair Trading Regulations 2008 ('the CPRs'); and relevant case law.
6. The CMA also responded⁵ to the government's recent consultation on improving consumer price transparency and product information for consumers (summarised in the government's response of 24 January 2024⁶). To the extent relevant, we encourage Ofcom to have regard to the views expressed by the CMA and others, as well as to the final text of the DMCC Bill when it enters into force in connection with the display of upfront pricing information. In the CMA's view, clear and simple pricing is most likely to help consumers make fully informed decisions about price and ensure that price competition is not limited by traders competing on misleading headline prices rather than the price which consumers must pay in practice.
7. The CMA agrees with Ofcom's assessment that the existing practice of inflation-linked price variation terms plus an additional percentage is likely to cause consumer harm and that it can do so in multiple ways:⁷
 - (a) The complexity of inflation-linked-price variation terms making it harder for consumers to find the best deal for their needs.
 - (b) Reduced price clarity and certainty limiting consumer engagement with the market, which in turn can make the competitive process less effective and reduce the availability of deals with pricing structures that are certain, transparent and understandable.

⁴ [CMA response to Committee of Advertising Practice \('CAP'\) and Broadcast Committee of Advertising Practice \('BCAP'\) consultation on new guidance on how to present information about mid-contract price rises in ads for broadband and mobile services](#)

⁵ [CMA response to price transparency consultation \(publishing.service.gov.uk\)](#)

⁶ [Government response to consultation on 'Smarter Regulation: Improving consumer price transparency and product information for consumers' - GOV.UK \(www.gov.uk\)](#)

⁷ [Ofcom consultation on prohibiting inflation-linked prices rises](#) (pages 28-36, particularly paragraphs 3.53, 3.59 and 3.69)

(c) Imposing unfair financial risks on consumers.

8. The CMA also notes Ofcom's findings that: (a) consumers tend to focus on headline prices but overlook inflation-linked price variation terms and cannot work out actual prices and (b) in response to such consumer behaviour, providers may have a greater incentive to compete by lowering headline prices (as this is the most salient price component that consumers understand), rather than by lowering actual prices for the entire contract (which most consumers cannot work out).⁸ Such findings are consistent with learnings from behavioural economics (particularly salience bias and present bias) as set out by Ofcom,⁹ as well as the CMA's own work on Online Choice Architecture.¹⁰

Response to Ofcom's proposals

9. Given Ofcom's identification and assessment of the harm caused by existing practices, the CMA welcomes that Ofcom is taking action to address the issue. Ofcom's proposals to prohibit inflation-linked price variation terms and to require providers to set out price rises in advance in pounds and pence are a significant improvement on the current situation. Specifically the proposals will:
- (a) Remove financial uncertainty for consumers.
 - (b) Make it possible to calculate the total cost of a contract when deciding between options. As long as the total cost the contract is clear to consumers and given full prominence, this will make it easier for consumers to shop around and find deals that best meet their needs. If consumers do this in practice, this will in turn promote more effective competition between providers beyond the first term of contracts and better overall market outcomes.
10. The extent to which these proposals address some of the harms identified by Ofcom will depend on the extent to which consumers engage with this information in practice. While Ofcom's proposals mean that the pricing information will be simpler and clearer than the current situation, there remains some complexity in the stepped pricing structure of these fixed-term contracts. This stepped pricing structure, in combination with the behavioural

⁸ [Ofcom consultation on prohibiting inflation-linked prices rises](#) (paragraphs 3.15 and 3.19)

⁹ [Ofcom - Inflation-linked price rises: relevant behavioural economics concepts](#); [Ofcom consultation on prohibiting inflation-linked prices rises](#) (paragraphs 3.45-3.53)

¹⁰ [CMA Online Choice Architecture: How digital design can harm competition and consumers](#) (for examples paragraphs 3.13 to 3.16 on 'choice information').

biases Ofcom notes in relation to existing pricing structures (particularly ‘present bias’, ‘salience bias’ and overall ‘cognitive load’),¹¹ could limit the extent to which consumers engage with the information available. As Ofcom further develops its proposals and reviews the impact of its changes in the future, we would encourage it to consider:

- (a) Any steps that can be taken to make it as easy as possible for consumers to compare the total price of contracts.
 - (b) How to evaluate the extent to which these proposals have encouraged competition between providers (including competition on the price of the whole fixed term of contracts) and whether stepped pricing continues to make it difficult for consumers to engage with the market.
 - (c) In light of this whether any further action or changes may be appropriate, for example requiring fee-free exit after price rises or Ofcom’s non-preferred option in the consultation of requiring fixed charges (prohibiting price rises in fixed-term contracts).
11. Finally, we encourage Ofcom to ensure that, when making any changes in their pricing, providers fully comply with the requirements of the CPRs (and the equivalent rules due to be enacted when Part 4 of the DMCC Bill becomes law), in addition to the provisions in the General Conditions. In particular in order to ensure that consumers are able to make transactional decisions based on full pricing information, and that price comparisons between providers’ deals are based on the total price to be applied for the fixed period, rather than just the entry or initial price. This should include consideration in particular of the way that complex pricing might appear on price comparison websites and how such prices might be presented to consumers online or expressed in other channels.

Competition and Markets Authority

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¹¹ [Ofcom - Inflation-linked price rises: relevant behavioural economics concepts; Ofcom consultation on prohibiting inflation-linked prices rises](#) (paragraph 3.53)