




REPORT ON CONSULTATION AND DECISION NOTICE

Contracts which include clauses whereby providers may increase charge/s and/or fee/s however so described according to changes in an objective consumer price index compiled by a public institution

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1 Abbreviations

CJEU	Court of Justice of the European Union
CAC	Consumer Affairs Council
CAM	Consumers' Association - Malta
ECNSR	Electronic Communications Networks and Services (General) Regulations (S.L. 399.48 of the Laws of Malta)
ECS	Electronic Communications Services
ETF	Early Termination Fees
IAS	Internet Access Service
ICS	Interpersonal Communications Service
M2M	Machine-to-Machine Services
MCA	Malta Communications Authority
MCCAA	Malta Competition and Consumer Affairs Authority
NB-ICS	Number-Based Interpersonal Communications Service
NI-ICS	Number-Independent Interpersonal Communications Service
OCA	Office for Consumer Affairs within the Malta Competition and Consumer Affairs Authority
OFCOM	Office of Communications (the UK Communications regulator)
S.L.	Subsidiary Legislation

2 Executive Summary

In the past few months, two (2) local electronic communications service (hereafter 'ECS') providers introduced clauses in some of their end-user contracts enabling them to increase any charge/s and/or fee/s, however so described, of their service/s by an amount which corresponds to 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 (hereafter 'ETF') when such increase in charge/s and/or fee/s are implemented (throughout this Decision Notice, for ease of reference, such clauses shall be referred to as 'Price Indexation Clauses').

This matter was at the centre of a 2015 ruling by the Court of Justice of the European Union (hereafter 'CJEU') in which 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.*"

The Malta Communications Authority (hereafter the 'MCA') is concerned that the inclusion of such clauses in contracts may have a negative impact on consumers, microenterprises, small enterprises or not-for-profit organisations. MCA's concerns include the following:

- End-users may not be aware that the contract they are agreeing to contains such clauses.
- End-users may not understand the impact that such clauses may have when they subscribe to a contract, and may consequently not make an informed choice.
- The inclusion of such clauses in contracts do not give end-users sufficient certainty about what they may be required to pay throughout the duration of the contract of their subscription. Furthermore, the recent increase in rates of inflation has made it even harder for end-users to understand and predict what they are likely to pay under such contract terms and to make informed choices.
- Some end-users may struggle with higher unpredictable or unexpected increases in fees and/or charges.
- End-users who are tied to a contractual period cannot avoid incurring these charges as providers may impose 'ETF' if they terminate their contract.
- Providers can offer contracts with a commitment period of up to twenty-four (24) months, which means that end-users subscribed to contracts which contain such

clauses could face up to two (2) annual rises in charge/s and/or fee/s while they are in their initial contractual period.

- The increases in fees and charges apply regardless of when end-users signed up to the contract. This means that by way of example, end-users could be subjected to an increase in charge/s and/or fee/s even if the contract was signed only a few weeks before such an increase is implemented by the provider.
- The inclusion of such clauses in contracts make it harder for end-users to search for and compare different tariff plans, and hence may distort effective competition.

In order to minimise the negative impact that such 'price indexation clauses' could have on end-users, in August 2023, the MCA launched a public consultation in which it proposed a set of measures to be adhered to by providers of publicly available ECS other than number-independent interpersonal communications services (hereafter 'NI-ICS') and other than transmission services used for the provision of machine-to-machine services (hereafter 'M2M').

In response to the public consultation, the MCA received feedback from six (6) respondents, namely the Consumer Affairs Council (hereafter 'CAC'); the Consumers' Association – Malta (hereafter 'CAM'); EPIC Communications Limited (hereafter 'Epic'); GO plc (hereafter 'Go'); Melita Ltd (hereafter 'Melita'); and the Office for Consumer Affairs (hereafter 'OCA') within the Malta Competition and Consumer Affairs Authority (hereafter 'MCCAA').

Having considered and evaluated the submissions received in response to the public consultation, the MCA is hereby issuing a Decision Notice titled '*Contracts which include clauses whereby providers may increase charge/s and/or fee/s however so described according to changes in an objective consumer price index compiled by a public institution*' which mandates a set of rules applicable to providers. The dates on which MCA's decisions shall become applicable are outlined in Section 5 of this Decision Notice.

3 Legal Basis

The legal instruments listed in the sections below empower the MCA to implement the measures being mandated in this decision:

Website Transparency and Publication of Information

Regulation 88(1) of the [‘Electronic Communications Networks and Services \(General\) Regulations’](#) as per SL 399.48 of the Laws of Malta (hereafter ‘ECNSR’), requires that where providers of internet access services (hereafter ‘IAS’) or publicly available interpersonal communications services (hereafter ‘ICS’) make the provision of such services subject to terms and conditions, then such providers shall ensure that the information referred to in the Ninth Schedule of the ECNSR is published in a clear, comprehensive, machine-readable manner and in an accessible format for end-users with disabilities in accordance with European Union legislation harmonising accessibility requirements for products and services. Regulation 88(1) of the ECNSR, further states that the MCA may specify additional requirements regarding the form in which such information is to be published.

Additional Information to be included in the ‘Contract Summary’

Regulation 87 of the ECNSR, provides that before being bound by a contract or any corresponding offer, end-users shall receive a ‘*contract summary*’ as established in the [European Commission’s Implementing Regulation \(EU\) 2019/2243](#) (hereafter ‘Contract Summary Regulation’). Regulation 87(8)(c) of the ECNSR, empowers the MCA to ‘*establish other information requirements to be included in contracts not related to aspects regulated under this regulation, in particular to address newly emerging issues*’. The heading included in the [Annex Document](#) of the ‘[Contract Summary Regulation](#)’ titled ‘*Other Information*’ states that this part of the contract summary shall include ‘*any additional information required by Union or national law before a consumer is bound by a contract or any corresponding offer can be included by the providers*’.

Explicit Consent

In accordance with Regulation 87(4) of the ECNSR, the MCA is empowered to determine how a consumer gives his consent to a contract for the provision of publicly available ECS other than transmission services used for the provision of M2M services.

Maximum Contractual Commitment Period

Regulation 91(3)(b) of the ECNSR provides that contracts concluded between consumers and providers of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services, do not mandate a commitment period longer than twenty-four (24) months, which period may be shortened by the MCA. In doing so the MCA shall ensure that there is always applicable a maximum contractual commitment period. This stated, any such requirement however does not apply to the duration of an instalment contract

where the consumer has agreed in a separate contract to instalment payments exclusively for deployment of a physical connection, in particular to very high capacity networks.

Modification of Contractual Conditions by Providers and Rights of End-Users

Regulation 92 of the ECNSR empowers the MCA to determine the format, content and the manner of the notification which providers of publicly available ECS other than NI-ICS are required to send to end-users on a durable medium at least thirty (30) days in advance of any change in the contractual conditions.

4 MCA's Decisions

This Section discusses the feedback received regarding MCA's proposed measures presented in the consultation (ref: MCA/C/23-5029), published in August 2023, and outlines the final decisions being adopted by the MCA in this Decision Notice.

The decisions contained in this Decision Notice shall apply for the provision of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services.

The MCA clarifies that any decisions contained in this Decision Notice shall be without prejudice to any decision or directive however so described issued by a public authority mandating requirements on the applicability of such clauses including decisions or directives however so described issued by a public authority abolishing or amending such clauses in contracts.

4.1 Respondents' Views to MCA's Concerns

In their submissions, three (3) respondents stated that they share MCA's same concerns as mentioned previously in 'Section 2' of this Decision Notice and consider that the inclusion of 'price indexation clauses' in end-user contracts will have a negative impact on end-users. One of these three (3) respondents stated that it considers that 'price indexation clauses' could possibly constitute a breach of consumer protection legislation, namely the provisions regulating unfair contract terms and unfair commercial practices. Whilst taking note of these comments, the MCA clarifies that any decisions contained in this Decision Notice are without prejudice to any decision or directive, however so described, which may be issued by a public authority including regulatory measures that may be taken by the OCA¹ in relation to the subject matter dealt with in this Decision.

Another of these three (3) respondents stated that in principle it does not agree that providers are allowed to change the contractual conditions of end-user contracts by providing end-users a thirty (30) day prior notification granting them the option to rescind the contract without penalties. According to this respondent, the increase in charge/s and/or fee/s of service/s resulting from the operation of a 'price adjustment clause' is even more unjust towards end-users because in such circumstances end-users are not even allowed to at least rescind the contract without incurring any penalties.

Another respondent stated that the increase in inflation rates is proving to be a threat to the telecommunications sector and that some providers are opting to include 'price indexation clauses' in contracts as a safeguard against the increase in inflation rates. The MCA

¹ The OCA is responsible from enforcing the Consumer Affairs Act (Chapter 378 of the Laws of Malta) and the Consumer Rights Regulations (Subsidiary Legislation 378.17).

recognises that providers may need to adjust, from time to time the charge/s and/or fee/s of their service/s. The MCA contends that in doing so providers should guarantee a high level of transparency and predictability to end-users. Regrettably, the manner in which 'price indexation clauses' have been introduced by some local providers does not offer such safeguards. The measures proposed by the MCA in its consultative document aim to minimise the negative impact which is caused to end-users when subscribing to service/s plans containing such clauses.

One (1) respondent stated the CJEU ruling allows providers to include 'price indexation clauses' in their end-user contracts and stated that there are a number of safeguards already in place to protect end-users' interests. Another respondent argued that in certain instances the proposed measures *'restrict the proper implementation of Inflation Clauses and consequently such proposals create far more burdens on the consumer and operators'*. Another respondent stated that some of the proposed decisions included in MCA's Consultation Document (namely proposed decision 2 and 3 contained therein), would, if implemented, circumvent and neutralise the CJEU Judgement and that this would effectively constitute a breach of EU law and principles. The MCA disagrees with these respondents' views and states the following:

- 1) The CJEU judgement clearly states that a change in charges resulting from the operation of a price adjustment clause included in an end-user contract (which clause provides 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'* which grants the end-user the right to withdraw from the contract without penalty. The measures proposed by the MCA cannot be construed to be in conflict with the said CJEU decision.
- 2) The measures proposed by the MCA in its consultation, whilst respecting the above referred CJEU judgement, aim to ensure a higher level of end-user protection and transparency about the inclusion of 'price indexation clauses' in end-user contracts.
- 3) The MCA in accordance with its remit at law is required to adopt the measures being included in this final decision in accordance with the legal provisions cited in 'Section 2' above.
- 4) The question referred to the CJEU and the resulting CJEU decision do not enter into the merits of whether the inclusion of such clauses in end-user contracts constitute or not an 'unfair contract term' or an 'unfair commercial practice'. As stated previously the MCA clarifies that any decisions contained in this 'Decision Notice' are without prejudice to any decision or directive which may be issued by a public authority including any regulatory measures that may be taken by the OCA establishing that the inclusion of 'price indexation clauses' in end-user contracts constitute an 'unfair contract term' or an 'unfair commercial practice'.

One (1) respondent stated that MCA's consultation document does not appear to have included, within its scope, increases not directly related to specific tariff plans, such as one-off fees (e.g. technician call-outs fees amongst others). This respondent suggested that the final

MCA decision should clarify whether the aforesaid decision is also applicable to such one-off fees which are usually applicable to all contracts. The MCA clarifies that in its consultation document it did state that the (proposed) requirements would apply to *'contracts which include clauses whereby providers may increase charge/s and/or fee/s however so described according to changes in an objective consumer price index compiled by a public institution'* (emphasis added). The text *'charge/s and/or fee/s however so described'* is non exhaustive and therefore comprises any possible charge or fee contained in a contract concluded between a provider and an end-user and/or which could be charged to the end-user.

For the avoidance of any doubt, as stated in 'Section 2' above, for the scope of this Decision Notice, the term 'Price Indexation Clause/s' refers to contractual clauses included in contracts for the provision of publicly available ECS, other than NI-ICS and other than transmission services used for the provision of M2M, and which enable the provider to increase any charge/s and/or fee/s however so described according to changes in an objective consumer price index compiled by a public institution.

4.2 Proposal for an Alternative Measure

One (1) respondent suggested an alternative approach to the one proposed by the MCA in its consultative document. This respondent proposed that any increases in prices implemented by providers in accordance with 'price indexation clauses' are capped by a maximum increase of 4.9%. This respondent proposed that providers would not be able to increase the prices of their service/s by more than 4.9% even if the inflation rate of an objective consumer price index compiled by a public institution exceeds this percentage.

This respondent also referred to the guidance issued by the Committee of Advertising Practice 'CAP' in the UK titled *'Guidance on the presentation of mid-contract price increases in advertising for telecoms contracts'*. This respondent made a proposal based on best practices included in this guidance and proposed that the 'contract summary' and 'pre-contractual document' include a provision stating that price indexation clauses are capped by a maximum of 4.9%.

The MCA has the following observations to share:

- (i) The MCA is not empowered to establish maximum increases or decreases of retail charge/s and/or fee/s of service/s plans offered by providers. Having said this, providers may still opt to establish maximum increase caps of charge/s and/or fee/s in their 'price indexation clauses'. The decisions contained in this 'Decision Notice' however shall apply to all contracts containing 'price indexation clauses' irrespective of whether providers have established a maximum cap increase or not.
- (ii) The proposal fails to strike a balance between the interests of end-users and of providers since it only considers the possibility in relation to increases of the charge/s and/or fee/s of service/s plans and conversely does not contemplate the possibility that

charge/s and/or fee/s of service/s plans decrease if the consumer price indexes compiled by public institutions record a deflation.

- (iii) This proposal does not provide end-users sufficient certainty about what they may be required to pay throughout the duration of the contract of their subscription meaning end-users cannot predict whether their charge/s and/or fee/s will increase, by way of example by 1% or by 4.9%.
- (iv) The proposal does not enable end-users to easily compare the various tariff plans offered by different providers, at the crucial decision-making stage prior to entering into a contract. This limitation stems from the intrinsic nature of the proposed mechanism, which relies on a variable indicator that can only offer a best-effort prediction of potential changes to charge/s and/or fees, the realisation of which is uncertain. Under such circumstances, price comparisons become inherently unreliable.
- (v) The proposal fails to provide any details on the rationale and methodology used by this respondent to determine the 4.9% increase capping.
- (vi) The MCA is aware of and has taken note of the guidance issued by the Committee of Advertising Practice 'CAP' in the UK which forms part of the UK Office of Communications (hereafter 'OFCOM'). It is pertinent to note that notwithstanding the publication of these guidance notes (which are necessary to increase transparency on the matter), more recently, in April 2023, OFCOM published the terms of reference of a [review](#) it is conducting on the subject matter. As stated by OFCOM, one of its major concerns remains that *'the use of inflation-linked in-contract price rise terms may not give customers sufficient clarity or certainty about what they will pay, particularly during the minimum contract period'*. The MCA wishes to take the opportunity to state that before publishing its consultative document, it engaged in discussions with a number of European national regulatory authorities to gather their experiences and feedback on the matter.

In view of the above, the MCA is not adopting the above referred proposal submitted by this respondent.

4.3 Website Transparency and Publication of Additional Information

4.3.1 MCA's proposal

MCA's consultative document proposed that providers of publicly available ECS, other than NI-ICS and other than transmission services used for the provision of M2M, offering service/s plans which are subject to a 'price indexation clause' must ensure that the webpages of their websites where the details of such service/s plans are publicised, clearly indicate the applicability of such clauses. MCA's proposal further suggested that the information indicating the applicability of such clauses on such webpages must be:

- of a distinct and noticeable colour, different from the other text;
- underlined; and
- the same size or larger than the prevailing font size used to highlight the main characteristics of the service/s plan.

4.3.2 Feedback received and MCA's final decision

The MCA received feedback from two (2) respondents who supported and agreed with MCA's proposal as outlined in section 4.3.1 above. One (1) of these two (2) respondents also stated that there are a number of consumers who for different reasons cannot access the providers' websites. In order to ensure that these consumers become aware of such 'price indexation clauses', this respondent suggested that similar requirements to those proposed by the MCA as outlined in section 4.3.1 above should also be mandated when service/s plans which are subject to a 'price indexation clause' are advertised on radio, TV, newspapers, social media, leaflets and billboards. The MCA acknowledges the benefits of this proposal and will refer this suggestion to the competent authority responsible for regulating commercial advertisements.

Another respondent contended that the information regarding 'price indexation clauses' should not be more prominent than other service related information which is necessary for such consumers to make an informed decision when entering into their contract, and suggested that information relating to product specification, price and tax information should be given equal prominence as information regarding inflation. Another respondent stated that whilst the information regarding 'price indexation clauses' on the providers' webpage should be distinct from generic information published on the same webpage, it should follow the webpage colour scheme. This respondent also stated that having the text underlined might give the impression to the consumer that such text is a hyperlink that leads to a further page, which would not be in fact the case. This respondent also objected to the proposal that the information regarding the applicability of 'price indexation clauses' is of the same size or larger than the prevailing font size used to highlight the main characteristics of the service.

The MCA reiterates the importance of ensuring that transparency mechanisms are in place to enable consumers to become aware of the applicability of 'price indexation clauses' before committing to a contract. Whilst this remains MCA's primary objective, after having evaluated the feedback received, the MCA has decided to amend some of the proposed requirements included in its consultative document to address some of the concerns raised by these respondents. The below provides a breakdown of MCA's feedback and final position on the points raised:

- i. The MCA is of the view that information regarding 'price indexation clauses' should be distinct from the other service/s related information in view of the implications such clauses may have on consumers if they are applied;
- ii. The MCA agrees with the view of a respondent that the information regarding 'price indexation clauses' could still be displayed in a distinct manner whilst adhering to the provider website's colour scheme. In order to achieve a more balanced approach, the MCA is not mandating in its final decision that such information is of a '*noticeable colour, different from the other text*' but will retain the requirement that such information must be 'distinct' from other text displayed on the webpage (e.g. by using a 'Bold Font' or/and by displaying the information in 'Capital Letters');
- iii. The MCA recognises that if information regarding 'price indexation clauses' on the providers' webpage is underlined then some consumers may indeed think that such text is a hyperlink and may thus confuse consumers. The MCA is therefore removing this obligation from its final decision;
- iv. The MCA considers that its proposal to include this information regarding 'price indexation clauses' on the providers' webpage in the same size or larger than the prevailing font size used to highlight the main characteristics of the service/s plan provides sufficient flexibility to providers and therefore is retaining this requirement in its final decision.

In response to a clarification request received, the MCA clarifies that when referring to 'webpages of the providers' websites' where the details of service/s plan are publicised', the MCA is referring to the 'product pages' on the providers' website where providers' advertise and publish the details of the service/s plans they offer.

For the avoidance of any doubt, the MCA is adding text in 'Decision 1' below to clarify that the information regarding 'price indexation clauses' must include information clarifying whether consumers will be granted the right to withdraw from their contract without penalty in the event of an increase of a charge/s and/or fee/s, however so described, resulting from the operation of such 'price indexation clauses'.

Decision 1

Providers of publicly available ECS, other than NI-ICS and other than transmission services used for the provision of M2M, offering a service/s plan which is subject to contractual clauses which enable providers to increase any charge/s and/or fee/s, however so described, of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution, must ensure that the webpages of their website where the details of such service/s plan is publicised, clearly indicate the applicability of such clauses.

The information indicating the applicability of such clauses on such webpages must be:

- distinct (e.g. in 'Bold Font' or/and in 'Capital Letters');
- and
- the same size or larger than the prevailing font size used to highlight the main characteristics of the service/s plan.

The information referred to above must state whether consumers will be granted the right to withdraw from their contract without penalty in the event of an increase of a charge/s and/or fee/s, however so described, resulting from the operation of such contractual clauses.

The MCA received feedback from one (1) respondent who stated that the 'pre-contractual document' is very detailed and sometimes the information contained therein is not readily understood leading to a situation where consumers reading the 'pre-contractual document' can easily miss 'price indexation clauses'. A second respondent suggested that in addition to MCA's proposal, the information in the 'pre-contractual document' should also be positioned immediately beneath the clause indicating the actual price of the service/s plan to enable consumers to become aware of the 'price indexation clause'.

In order to address both of these respondents' concerns, the MCA considers that instead of adopting the proposal submitted by the second respondent, it would be more effective if the details regarding the inclusion of a 'price indexation clause' are included in the contract summary which is required to be provided to consumers before they are bound by a contract or any corresponding offer in accordance the ['Contract Summary Regulation'](#). Regulation 87 (8)(c) of the ECNSR, empowers the MCA to *'establish other information requirements to be included in contracts not related to aspects regulated under this regulation, in particular to address newly emerging issues'*.

Furthermore, the heading included in the [Annex Document](#) of the ['Contract Summary Regulation'](#) titled *'Other Information'* states that this part of the contract summary shall include *'any additional information required by Union or national law before a consumer is bound by a contract or any corresponding offer can be included by the providers'*. To this effect, the

MCA considers that when the service/s plan offered by the provider is subject to a 'price indexation clause', beneath the heading titled 'Other relevant information' of the 'Contract Summary', providers should include the details of how such 'price indexation clauses' are applied. The MCA is therefore introducing this requirement in 'Decision 2' of this Decision Notice. For the avoidance of any doubt, this measure does not exonerate providers from including the details of the 'price indexation clauses' also in the 'pre-contractual document'.

One (1) respondent also suggested that the 'price indexation clauses' contained in the 'pre-contractual documents' should include a hyperlink to an illustrative example showcasing potential annual price increases, which information should also be prominently featured in any related advertisements, and not only on the ECS websites. The MCA acknowledges the benefits of this proposal, however it considers that providers should be given some flexibility and discretion on how and where to publish this additional information. Whilst the MCA is not mandating this proposal as a requirement, it encourages providers to implement similar solutions to enable consumers to easily comprehend by means of an illustrative example showcasing potential annual price increases with respect to service/s plans which are subject to a 'price indexation clause'.

Decision 2

Contract Summaries, as mandated by the [European Commission's Implementing Regulation \(EU\) 2019/2243 of 17 December 2019](#), are required to include information about any contractual clauses which enable providers to increase any charge/s and/or fee/s, however so described, of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution.

Additionally, the Contract Summaries must also state whether consumers will be granted the right to withdraw from their contract without penalty in the event of an increase of a charge/s and/or fee/s, however so described, resulting from the operation of such clauses.

This information must be positioned beneath the heading titled 'Other relevant information' of the 'Contract Summaries' and shall apply to the provision of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services.

4.4 Consumers' Explicit Consent

4.4.1 MCA's Proposal

In its consultative document the MCA proposed that before concluding a contract with a consumer, providers of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services obtain an explicit consent from the consumer in the form of a signature on a durable medium indicating that he/she is aware that the contract to which he/she is agreeing to includes clause/s which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution, and that when such clauses are applied by the provider, the consumer will have no right to terminate that contract without incurring the applicable ETFs.

MCA's proposal provided that such a signature should be distinct and separate from any other signature which providers are required to obtain from consumers before they enter into a contract, including but not limited to:

- Signature requirements emanating from 'Decision 2' of MCA's 'Decision Notice' titled ['Contracts, Transparency and Termination'](#);
- Signature requirements emanating from 'Decision 3' of MCA's 'Decision Notice' titled ['Wholesale Access to Data and the Provision of Publicly Available Directory Information Services'](#); and
- Signature requirements emanating from MCA's 'Decision Notice' titled ['Number Portability in Malta'](#) and corresponding [Number Portability Specifications](#).

The MCA also proposed that these requirements should only be applicable when the contracts for the provision of a service/s plan mandate a minimum contractual period or when the termination of the contract is subject to the applicability of an ETF.

4.4.2 Feedback received and MCA's final decision

Three (3) respondents who submitted feedback to MCA's consultation supported and agreed with MCA's proposal as outlined in section 4.4.1 above. These respondents also suggested that the MCA adopts additional measures to those proposed by the MCA which are being discussed in more detail hereunder. Three (3) other respondents raised some concerns and objected to MCA's proposal. The following points discuss the feedback received from these respondents and provides MCA's considerations and clarifications to these submissions:

- One (1) respondent stated that the services they provide have become subject to inflation and that therefore the imposition of 'price indexation clauses' are not included by providers of their volition but because of *'geopolitical and economic factors experienced worldwide'*. This respondent stated that such conditions are *'absolutely not imposed by operators'* and

are *'an indirect effect of the prevailing economic circumstances present in the country'*. This respondent therefore objected to MCA's proposal as in its view, the statement to be signed by the consumer would imply that consumers are being subjected to a price increase solely due to the will of the trader and as such this statement will cause repercussions on providers.

The MCA acknowledges that the costs of providers to supply their services are impacted by various factors, including inflation, and that as a result, providers may be motivated to adjust the retail charge/s and/or fee/s of the services they offer. Several mechanisms have been adopted by providers in the past, and continue to be adopted, to adjust the charge/s and/or fee/s of their service/s plans which guaranteed a minimum level of protection to consumers. Providers have flexibility to choose whatever mechanism they deem appropriate should they wish to adjust the charge/s and/or fee/s of the services they offer. The MCA however strongly believes that if providers opt to adjust charge/s and/or fee/s of their services by means of 'price indexation clauses', then the necessary protection measures need to be in place to minimise the harmful effect of such a mechanism and ensure that consumers' interests are safeguarded.

The MCA reiterates that one of its concerns is that consumers agreeing to a contract may not necessarily become aware of the inclusion of 'price indexation clauses', and of the fact that during the course of their subscription the charge/s and/or fee/s of their service/s plans might increase without being provided with the possibility to rescind their contract without incurring any penalties. MCA's proposal referred to in section 4.4.1 above is therefore only intended to ensure that before agreeing to a contract consumers are aware that the contract they are about to sign contains a 'price indexation clause'.

- One (1) respondent stated that the need to obtain an explicit signature is a requirement which is imposed on providers by Maltese law (unlike in most of the EU countries), thereby going over and above the requirements of the EECC. This respondent therefore suggested that without prejudice to its objection to this matter, the MCA at least affords providers autonomy to determine how such consent may be recorded. Another respondent stated that tick boxes in the contract should also be considered as viable options for signifying consent rather than a separate signature.

The MCA wishes to clarify that the absence of requirements outlined in section 4.4.1 in other countries does not preclude the MCA from introducing such requirements. The presence or absence of similar regulations in other jurisdictions does not limit the MCA's authority to implement its own requisites.

The MCA reiterates that it is imperative that before agreeing to a contract, consumers are made aware of the applicability of such 'price indexation clauses' due to the substantial impact resulting from their application. The MCA considers that the best way to achieve this is by requiring providers to obtain the explicit consent from consumers on a durable medium indicating clearly that they are aware that the contract to which they are agreeing to includes a 'price indexation clause'.

The MCA notes that its proposal, whilst establishing that providers need to obtain an explicit consent from consumers, did not specify the process which providers should follow to obtain such explicit consent. The MCA therefore considers that providers have the flexibility to establish the processes they need to undertake to obtain such explicit consent from consumers as well as the form in which such explicit consent is obtained.

The MCA clarifies that processes which entail that consumers tick a box to indicate that they are aware of the inclusion of a 'price indexation clause' in their contracts are strictly in this context deemed to satisfy the requirements of 'Decision 3' of this 'Decision Notice'. The MCA stresses that such 'tick boxes' must not be pre-selected by the provider but must be ticked specifically by the consumer.

The MCA clarifies that the processes adopted by providers to obtain the consumer's consent (including any processes which entail that consumers tick a box) must:

- i. include a statement which clearly indicates to consumers that the contract to which they are agreeing to include clause/s which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution and that when such clauses are applied by the provider, the consumer will have no right to terminate that contract without incurring any penalties;
- ii. be distinct and separate from any other signature or other tick boxes to be completed by consumers which providers are required to obtain from consumers before they enter into a contract.

MCA's acceptance that the explicit consent from the consumer may be obtained by means of a tick box as described above, only applies strictly in relation to the applicability of Decision 3 of this Decision Notice.

- One (1) respondent stated that by introducing a requirement to obtain a consumer's explicit consent catering specifically for 'price indexation clauses', consumers may be less inclined to thoroughly review all terms and conditions and would thus risk overlooking other very important clauses which form part of the contract.

The MCA is of the view that in accordance with regulation 87 of the ECNSR the 'pre-contractual document' and the 'contract summary' are required to be provided before consumers are bound by a contract, hence before giving their 'explicit consent' to a contract. In view of this, the MCA does not consider that consumers risk overlooking other clauses.

The MCA wishes to take the opportunity to encourage providers to ensure that they adhere to the provisions at law which aim to enable consumers to have easy access to the terms and conditions of their contracts, including requirements to:

- provide a copy of the 'pre-contractual document' on a durable medium;

- provide the 'pre-contractual document' and the 'contract summary' before consumers are bound by a contract;
- provide the information included in the 'pre-contractual document' and in the 'contract summary' in a clear and comprehensible manner; and
- publish the terms and conditions of contracts on their respective websites.

The MCA also encourages consumers to read the 'contract summary' and the 'pre-contractual document' before agreeing to a contract with a provider.

- One (1) respondent stated that consumers are already required to sign to provide for other consents when subscribing to a service/s plan and that therefore the introduction of an additional signature requirement would be burdensome on consumers.

The MCA respectfully disagrees with this respondent's views and conversely considers that its proposal provides a higher level of protection to consumers and is in their best interest. The MCA notes that the practice of obtaining more than one (1) signature or explicit consent from consumers is indeed a practice which is also adopted in other industries.

- One (1) respondent proposed that any increases in prices implemented by providers in accordance with price indexation clauses are capped by a maximum increase of 4.9% annually (see section 4.2 of this 'Decision Notice' for more details on this proposal) and suggested that instead of this proposal, the MCA should only require that the 'contract summaries' or the 'pre-contractual documents' include information about the 'price indexation clause' stating that any increase in charge/s or fee/s will be capped at a maximum 4.9% annually. This respondent contended that this proposal would provide added clarity to end-users. According to this respondent, this measure is confirmed by the Commission Notice² entitled '*Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights*' (hereafter the 'CRD Commission Notice'). Two (2) other respondents also stated that MCA's proposal should be repealed with one (1) of these respondents suggesting that the MCA should instead require that 'price indexation clauses' included in the 'pre-contractual document' and in the 'contract summaries' are in larger fonts and/or in bold or underline type whilst the other respondent suggested that this information is written in contracts in bold just before the signature of the consumer.

The MCA's views on the proposal by one of the respondents that any increases in prices implemented by providers in accordance with price indexation clauses are capped by a

² In its response, this respondent made specific reference to the following paragraph extracted from the 'CRD Commission Notice': '*It is not sufficient to provide the mandatory pre-contractual information merely as part of the general terms and conditions that the consumer may have to accept before moving on in the transaction process (50). The requirement to provide information in a 'clear and comprehensible manner' means that the individual elements of the mandatory information must be brought to the attention of the consumer*'.

maximum increase of 4.9%, have been provided in section 4.2 of this MCA 'Decision Notice'.

The MCA considers that providers are required to include 'price indexation clauses' in the 'pre-contractual documents' to be provided to consumers if they intend to adjust the charge/s and/or fee/s of their services in accordance with changes in an objective consumer price index compiled by a public institution, without granting the consumer the right to withdraw from the contract without penalty. The MCA agrees that 'contract summaries' should also include information about the applicability of 'price indexation clauses' and has in fact introduced a requirement in 'Decision 2' of this 'Decision Notice', to ensure that besides including information about the applicability of 'price indexation clauses' in the 'pre-contractual document', providers also include information about this clause in the 'contract summaries'.

The MCA does not believe that the proposal of just using a more visible font for 'price indexation clauses' in 'pre-contractual documents' provides the same level of assurances guaranteed by the MCA's proposal referred to in section 4.4.1. As stated also by another respondent, regrettably, due to different reasons, a number of consumers do not thoroughly read the information included in the 'pre-contractual documents' and therefore even if this clause is included in a more visible font some consumers may still overlook this information. This is why the MCA considers that consumers need to give their explicit consent to confirm that they are aware that the contract they are agreeing to contains a 'price indexation clause', as by means of the MCA's proposal, it is more probable that consumers will read the information they are signing for and hence be alerted to the inclusion of this clause.

The MCA clarifies, that it is not empowered to require that any given information included in 'contract summaries' use a more visible font than other information included in the same 'contract summaries' and therefore cannot impose such requirements.

- Two (2) respondents stated that the 'pre-contractual information' including 'price indexation clauses' should be written in clear and comprehensible manner to enable consumers to comprehend this information.

The MCA clarifies that in accordance with regulation 87(2) of the ECNSR, providers are required to ensure that the 'pre-contractual document' is provided in a 'clear and comprehensible manner'. For the avoidance of any doubt, the MCA is amending 'Decision 2' of its proposed Decision Notice to require that the statement to be provided to consumers for their explicit consent confirming that they are aware that the contract to which they are agreeing to includes a 'price indexation clause', must also be written in a 'clear and comprehensible manner'.

- One (1) respondent stated that the MCA did not specify the wording which consumers have to sign, to confirm that they are aware that the contract to which they are agreeing to includes a 'price indexation clause'. Another respondent suggested that the MCA clarifies that the 'price indexation clauses' are included specifically in the relevant affected tariff

plan, and not just stated as a vague possibility in general terms applicable to all tariff plans. According to this respondent the MCA did not make any proposals with respect to the actual contractual terms and conditions that must be communicated to and signed by the consumer, including the need to specify the index and metric used when an increase in prices is implemented.

The MCA is not proposing the exact wording that needs to be provided to consumers for their explicit consent because the conditions on how such 'price indexation clause' will be operated may vary from one provider to another. The MCA expects that providers use clear and comprehensible wording and that as a minimum, the applicable statement informs consumers that:

- i. the charge/s and/or fee/s may increase in accordance with changes in an objective consumer price index compiled by a public institution (providers should make reference to the specific consumer price index they intend to apply); and
- ii. if applicable, when an increase in charge/s and fee/s is implemented, consumers may not be granted the right to withdraw from the contract without penalty.

The MCA shall monitor the statements included by providers and shall provide guidance to providers accordingly. In this respect, the MCA reserves the right to introduce additional measures, including additional requirements on the information about 'price indexation clauses' to be included in the 'pre-contractual documents' and 'contract summaries' if it considers such action necessary to protect consumers' interests.

With reference to feedback provided by one (1) respondent who stated that 'price indexation clauses' should be included in the specific terms and conditions and not in the general terms and conditions of the service, the MCA believes that no further intervention is required from the MCA since by means of 'Decision 2' above, the MCA introduced the requirement which mandates that such 'price indexation clauses' are to be also included in the 'contract summaries' which are to be provided to consumers before they enter into a contract.

- One (1) respondent suggested that the statement to be signed by consumers stating that the contract to which they are agreeing to includes a 'price indexation clause' should also include all other charge/s and/or fee/s applicable to the service/s plan they are about to subscribe to.

The MCA is of the view that incorporating this extensive information in the statement to be signed by consumers could be impractical, potentially leading to oversight due to its complexity and length. The MCA clarifies that providers have an obligation to include information about the charge/s and/or fee/s, however so described, in the 'pre-contractual

document' and in the 'contract summary'³. In view of the above considerations, the MCA does not consider the necessity to adopt this proposal in its final Decision Notice.

- One (1) respondent suggested that the statement to be provided to consumers for their signature to inform them that the contract to which they are agreeing to includes a 'price indexation clause' must be in both the English and Maltese languages. Another respondent also suggested that 'pre-contractual documents' are made available in both English and Maltese language.

The MCA clarifies that under the laws administered by the MCA there is no obligation that requires providers to make the 'pre-contractual documents' in both English and Maltese. Considering the above, the MCA therefore is not mandating that the statement to be provided to consumers for their explicit consent must be in both languages. Having said this, the MCA encourages providers to publish the statement to be provided to consumers for their explicit consent as well as the 'pre-contractual documents' and 'contract summaries' in both English and Maltese languages.

- One (1) respondent suggested that before being bound by a contract, providers shall draw the consumers' attention to the inclusion of such a clause in a verbal manner, especially when elderly consumers are signing for a contract.

The MCA agrees with this respondent's views. Whilst the MCA shall not, for now, introduce this proposal as a requirement, it encourages providers to verbally alert consumers about the inclusion of a 'price indexation clause' in their contract when the agreement to the contract is given in the physical presence of a provider's representative (e.g. at one of the provider's outlet, when a representative visits the consumer's residence to obtain their explicit consent). The MCA will reassess its stance on incorporating this proposal as a requirement, should it deem it necessary in the future to enhance consumer protection.

- One (1) respondent also suggested that consumers are informed of the process to follow to renew their contract with their provider when their current contract expires.

The MCA clarifies that regulation 91(5) of the ECNSR requires that '*before the contract is automatically extended, providers shall inform end-users, in a prominent and timely manner and on a durable medium, of the end of the contractual commitment and of the means by which to terminate the contract. In doing so providers shall give end-users best tariff advice relating to their services*'.

³ The [European Commission's Implementing Regulation \(EU\) 2019/2243 of 17 December 2019](#) provides that contract summaries for standalone service plans do not exceed the equivalent of one single-sided A4 page when printed with an easily readable font and for bundled services plans it should not exceed three single-sided A4 pages when printed with an easily readable font.

In addition to the above, 'Decision 2, Part A' of MCA's 'Decision Notice' titled '[Contracts, Transparency and Termination](#)' provides that when concluding a contract with consumers, after having provided consumers with the applicable 'pre-contractual information' and 'contract summary', the provider must obtain the consumers' explicit consent by means of a signature on a durable medium clearly indicating his/her agreement to enter into that contract. This requirement also applies if a contract is being renewed for a new minimum contractual period.

The MCA considers that there are sufficient requirements already in place intended to ensure that consumers are informed of the process to follow to renew their contract with their provider when their current contract expires.

Decision 3

Before concluding a contract with a consumer, providers of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services shall obtain an explicit consent from the consumer, on a durable medium, in the form of a signature or by means of a box which is ticked by the consumer indicating that he/she is aware that the contract to which he/she is agreeing to includes clause/s which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution and whether when such clauses are applied by the provider, the consumer will have no right to terminate that contract without incurring any penalties.

The text to be provided to the consumer when requesting his/her explicit consent shall be written in a clear and comprehensive manner and shall:

- i. state that the contract to which he/she is agreeing to includes clause/s which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution; and
- ii. state whether when such clauses are applied by the provider, the consumer will have no right to terminate that contract without incurring any penalties.

Such an explicit consent shall be distinct and separate from any other consent which providers are required to obtain from consumers before they enter into a contract, including but not limited to:

- Signature requirements emanating from 'Decision 2' of MCA's 'Decision Notice' titled '[Contracts, Transparency and Termination](#)';
- Signature requirements emanating from 'Decision 3' of MCA's 'Decision Notice' titled '[Wholesale Access to Data and the Provision of Publicly Available Directory Information Services](#)'; and
- Signature requirements emanating from MCA's 'Decision Notice' titled '[Number Portability in Malta](#)' and corresponding [Number Portability Specifications](#).

This 'Decision 3' shall only be applicable when the contract for the provision of a service/s plan mandate a minimum contractual period or when the termination of the contract is subject to the applicability of any penalties.

4.5 Maximum Contractual Commitment Period

4.5.1 MCA's Proposal

MCA's consultative document proposed that contracts for the provision of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services which include contractual clauses which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution, does not mandate a commitment period longer than six (6) months.

The MCA further proposed that contractual clauses which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution and which are currently included in existing contracts which mandate a commitment period longer than six (6) months, should become null and void and should not be applied by providers after the initial six (6) month period from when the contract was signed by the consumer has elapsed.

MCA's proposal also provided that the above proposed decision should be without prejudice to the duration of instalment contracts where the consumer has agreed in a separate contract to instalment payments exclusively for deployment of a physical connection, in particular to very high-capacity networks as provided for in regulation 91(3) of the ECNSR.

4.5.2 Feedback received and MCA's final decision

Two (2) respondents supported and agreed with MCA's proposal as outlined in section 4.5.1 above with one (1) of these respondents stating that this is the proposal which provides most protection to consumers. Another respondent proposed that the maximum contractual commitment period of contracts which contain a 'price indexation clause' should be reduced to four (4) months.

Three (3) other respondents raised some concerns and objected to MCA's proposal. This section discusses the feedback received in response to MCA's proposal as outlined in section 4.5.1 above and provides MCA's considerations and clarifications to these submissions:

- One (1) respondent stated that MCA's proposal '*contradicts the judgement rendered by the Court of Justice of the European Union (CJEU)*'. This respondent stated that MCA's

decision will effectively constrain the application of such clauses to a limited number of six (6) month contracts and is contrary to the CJEU ruling. This respondent further stated that the MCA is relying on regulation 91(3)(b) of the ECNSR in an attempt to circumvent the above quoted judgement by the CJEU. This respondent is concerned that the MCA could employ a similar rationale to sidestep other judgements issued by both local and EU courts and stated that such a practice raises apprehensions about the consistent application of legal precedents and the safeguarding of legal rights within the electronic communications regulatory framework.

The MCA clarifies that the legal provision in question - namely regulation 91 (3) of the ECNSR - empowering the MCA to shorten the maximum contractual commitment period has been duly transposed into local legislation from the 'EECC', specifically Article 105 of the said 'EECC'. It is within these legal parameters that the MCA is introducing the requirement which mandates that contracts containing 'price indexation clauses' do not mandate a contractual commitment period longer than six (6) months. The MCA therefore reiterates that it is legally empowered to introduce this requirement and it strongly believes that in doing so it is acting in accordance with the above referred legal provisions.

The MCA refutes this respondent's claim that MCA's proposals '*contradicts*' the judgement of the 'CJEU' and reiterates, as already stated in section 4.1 above, that the measures being introduced by the MCA, whilst fully respecting the said CJEU judgement, only provide a higher level of protection to those consumers who subscribe to service/s plans which are subject to such 'price indexation clauses'.

- Another respondent (a provider offering contracts for the provision of ECS which are subject to a 'price indexation clause') raised a number of objections to MCA's proposal which are being summarised hereunder:
 - This provider noted that like other providers, it offers discounts to consumers who subscribe to contracts of more than six (6) months wherein such consumers benefit from discounts on their monthly access fees for the first four (4), six (6), eight (8) or 12 (months). This provider stated that if providers were to be required to limit the maximum contractual commitment periods to six (6) months it would no longer be economically viable for them to offer such discounts. This respondent further added that if providers had to still opt to offer acquisition discounts on six (6) month contracts, such providers would need to increase the charge/s and/or fee/s to make up for the possible increased rate of churn due to the short term contracts, meaning that the increase would not be regulated by inflation but by increases established by providers themselves.
 - This provider stated that it opted to adjust the charge/s and/or fee/s of its service/s plans on an annual basis (even though the NSO publishes inflation data every month) due to the fact that an annual price adjustment provides more transparency and certainty to end-users when compared to a monthly adjustment and stated that '*therefore the proposed six (6) month commitment period will cause further uncertainty and discrepancies amongst end-users as there will be several end-users who are subject to different inflation rates causing havoc amongst and users and our internal operations*'.

- This provider stated that MCA's proposal which suggests that consumers who are currently subscribed to a contract with a commitment period longer than six (6) months shall have their 'price indexation clause' null and void after that the first six (6) months' elapses, creates two categories of consumers, namely:
Category 1: Subscribers whose first six (6) month commitment period has elapsed; and
Category 2: Subscribers who are still within the first six months of their contract.
- This provider stated that this proposal will cause severe differentiation between the two categories of these consumers as this proposal suggests that the validity of the first six-month period shall be different to subscribers depending on when the contract was signed by the subscriber therefore having subscribers falling in 'Category 1' and 'Category 2' subscribed to the same plan and subject to different fees. This respondent stated that consequently, this creates technical obstacles to providers as it may not be technically feasible for providers to differentiate between subscribers who are on the same plan but are subject to different start dates and fees.
- This provider stated that if providers are required to limit the maximum commitment period to six (6) months and providers implement adjustments to the charge/s and/or fee/s of their service/s plans in accordance with a 'price indexation clause', providers would be required to notify the MCA and consumers thirty (30) days in advance of any such adjustments and therefore *'such notification process would condense the life span of six (6) month agreement and thus the applicability of the price may increase even further'*.
- This provider stated that providers are also subject to high inflation rates imposed on them by third parties over a long period of time to ensure that their consumers' services are not prejudiced. According to this provider, if this proposal had to be adopted in MCA's final decision, providers would have difficulties to cover long term costs incurred to maintain ongoing services and there would be no room for investment by the providers and this could potentially cause economic stagnation and threaten the operator's financial stability.
- This provider also stated that some providers are dependent on each other in order to provide services to their consumers such as in the case of players providing VULA services. This respondent stated that such providers have access to VULA infrastructure at a cost and such costs would cover expenses for the whole year therefore rendering contracts of a six (6) month duration no longer commercially viable for operators to provide VULA to their customers.
- This provider also stated that this proposal would also have direct impact on its device financing scheme due to the fact that in order to benefit from such a scheme, besides paying the mobile device fee, consumers need to also subscribe to a monthly plan for twenty- four (24) months thus guaranteeing that monthly instalments for mobile devices are carried out for a minimum period of twenty-four (24) months. This provider therefore stated that if the twenty-four (24) month contractual commitment period, is reduced to six (6) months, this will create a high risk of end-users paying for their devices only for the first six (6) months, burdening providers with the task to make good for the unpaid mobile device fees, resulting in an excessive amount of bad debt.

The MCA takes note of the challenges raised by this respondent to limit the maximum contractual commitment period of contracts which include a 'price indexation clause' to six (6) months. The MCA has the following observations to make in response to this feedback:

- The MCA welcomes and supports the provision of discounts and device financing schemes which providers offer to consumers. The MCA however considers that the benefits that such discounts and device financing schemes offer to consumers diminish considerably the moment in which the charge/s and/or fee/s of the services provided are increased (by an amount which cannot be pre-determined at the time of the conclusion of the contract) without providing consumers the possibility to rescind the contract without penalty fees should they not afford such an increase.
- The MCA appreciates the fact that the costs of providers to supply their services are impacted by inflation. The MCA is not disputing the fact that providers may, as a result, be required to adjust the retail charge/s and/or fee/s of the services they offer. MCA's concern is that if charge/s and/or fee/s are increased by means of 'price indexation clauses' consumers who are tied to a contractual period cannot avoid incurring these charges as providers may impose penalties if they terminate their contract prematurely. These consumers would not have been able to predict the amount of such increases and some consumers may not even be able to afford such unpredictable or unexpected increases in fees and/or charges. By reducing the maximum contractual period of new contracts (i.e. contracts issued after 'Decision 4 – Part A' of this Decision Notice comes into effect) containing a 'price indexation clause' from a maximum time period of twenty-four (24) months to a maximum time period of six (6) months, the MCA would guarantee that consumers would only have to absorb such increases for a shorter period of time before they can rescind their contract without incurring any applicable penalties.
- For the avoidance of any doubt, the MCA clarifies that such a maximum contractual commitment period of six (6) months is being applied only to those contracts containing 'price indexation clauses'. This therefore does not preclude providers from offering service/s plans with a contractual commitment period of up to twenty-four (24) months provided that they do not contain 'price indexation clauses'. If providers would need to increase the charge/s and/or fee/s of contracts mandating a maximum contractual commitment period of twenty-four (24) months, they would need to use other means to do so and would not be allowed to implement such increase by means of 'price indexation clauses'. The MCA further notes that providers employ various mechanisms to adjust the charge/s and/or fee/s of their service/s plans. These mechanisms serve the purpose of enhancing the providers' ability to anticipate their financial revenues, whilst at the same time furnishing consumers with clear and precise information regarding the total costs of services throughout the contract commitment period.

By way of example, one of the mechanisms used by some providers to adjust their charge/s and/or fee/s is that to provide service/s plans which include a pre-established (i.e. pre-quantified) higher monthly access fee which comes into force after that the first pre-determined number of months would have lapsed (e.g. the provision of a service/s plan at a monthly access fee of €20 for the first 12 months which goes up to €25 thereafter). Such pre-established higher access fees would have been communicated

to consumers in the providers' adverts, pre-contractual document, contract summary, etc.

In addition to the above, providers may also increase/s charge/s and/or fee/s of service/s plans made in accordance with section 6.4 of MCA's decision titled ['Contracts, Transparency and Termination'](#)⁴.

- One (1) respondent requested the MCA to clarify whether providers would be able to implement adjustments to charge/s and/or fee/s of their service/s plan of subscribers whose first six (6) month commitment period has elapsed by an amount which corresponds to an objective consumer price index compiled by a public institution provided that they allow such subscribers a thirty (30) day time window to rescind their contract without penalty.

In response to this request the MCA clarifies that:

- New contracts containing 'price indexation clauses' issued by providers after the date of applicability of 'Decision 4 Part A' of this Decision Notice (i.e. 8th of January 2024), shall not mandate a commitment period longer than six (6) months. Such six (6) month contracts may be automatically extended provided that such extension period is of an indefinite nature (i.e. following the lapse of the first six (6) month period, consumers are no longer tied to a minimum contractual period unless they agree to sign to a new contract in accordance with MCA's decision titled ['Contracts, Transparency and Termination'](#)). Providers may implement adjustments to the charge/s and/or fee/s of subscribers whose initial six (6) month commitment period has elapsed and are now on an indefinite contractual period by an amount which corresponds to an objective consumer price index compiled by a public institution since such subscribers would automatically be able to rescind their contract without incurring any penalties; and
 - With reference to contracts agreed to with consumers prior to the date of applicability of 'Decision 4 Part A' of this Decision Notice (i.e. 8th of January 2024), which are subject to a contractual period of more than six (6) months and which contain a 'price indexation clause', the MCA clarifies that providers are not precluded from implementing adjustments to the charge/s and/or fee/s of subscribers whose initial six (6) month commitment period has elapsed by an amount which corresponds to an objective consumer price index compiled by a public institution provided they give such subscribers the opportunity to rescind their contract without incurring any penalties. The text of MCA's final decision includes a minor amendment to clarify this point.
- Another respondent (a provider offering contracts which are subject to a 'price indexation clause') also objected to MCA's proposal and suggested that it should not apply to the service/s plans it offers on the basis that its current 'price indexation clause' already

⁴ Section 6.4 of this decision provides, amongst others, that consumers shall have the right to terminate their contract without incurring any ETFs upon notice of changes in the contractual conditions proposed by the publicly available ECS other than NI-ICS unless the proposed changes are: (a) exclusively to the benefit of consumers; (b) are of a purely administrative nature; or (c) are directly imposed by EU or national law.

provides sufficient 'safeguards' with regards to the recurrence rates of increase. This provider stated that the 'price indexation clauses' it applies provides the following 'safeguards':

- i. charge/s and or fee/s increases may only be done once during the first half of the year; and
- ii. consumers are given the opportunity to rescind their contract without penalties if the increase exceeds a set percentage capped limit.

Subsequently this respondent stated that the second part of MCA's proposal which provides that 'price indexation clauses' included in existing contracts should become null and void and shall not be applied by providers after the initial six (6) month period from when the contract was signed by the consumer has elapsed, should also be withdrawn from MCA's decision notice. In this respondent's view it is unlikely for a provider to carry out price increases within the initial six months. A price increase is more likely to take place after the lapse of the first year, when the tariff gradually becomes less reflective of the then current market conditions.

The MCA does not consider the conditions implemented by this provider to sufficiently protect the interests of consumers. The MCA has provided its views on the implementation of 'price indexation clauses' similar to the one being offered by this provider in section 4.2 of this 'Decision Notice'.

This provider also stated that it is unlikely for a provider to carry out price increases within the initial six months but did not rule out this possibility. The MCA therefore considers that it should maintain the second part of its proposal which provides that 'price indexation clauses' included in existing contracts become null and void and should not be applied by providers after the initial six (6) month period from when the contract was signed by the consumer has elapsed. As stated previously, the MCA is also including some additional text to this requirement to provide more clarity.

- Two (2) respondents supported and agreed with MCA's proposal as outlined in section 4.5.1 above whilst another respondent proposed that the maximum contractual commitment period of contracts which contain a 'price indexation clause' should be reduced further to four (4) months.

The MCA at this junction considers that the maximum contractual commitment period of contracts which contain a 'price indexation clause' should be set at six (6) months. The MCA will however continue monitoring this practice and reserves the right to consult again on the possibility to review this maximum contractual period should the need arise.

In view of the above observations, after having considered all the feedback received, the MCA is retaining the requirements proposed in MCA's consultative document as referred to in section 4.5.1 above in its final decision and is including some additional text to this requirement to provide more clarity as outlined above.

Decision 4

PART A

Contracts for the provision of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services which include contractual clauses which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution shall not mandate a commitment period longer than six (6) months.

PART B (Applicable to contracts agreed to with consumers prior to the date of applicability of 'Decision 4 Part A' above (i.e. 8th of January 2024) and which mandate a commitment period longer than six (6) months)

Contractual clauses which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution and which are applied by providers after that the initial six (6) month period from when the contract was signed by the consumer has elapsed shall grant consumers the possibility to rescind their contract without incurring any penalty fees in accordance with section 6.4.1 of MCA's Decision Notice titled ['Contracts, Transparency and Termination'](#).

This decision shall be without prejudice to the duration of instalment contracts where the consumer has agreed in a separate contract to instalment payments exclusively for deployment of a physical connection, in particular to very high capacity networks as provided for in regulation 91(3) of the ECNSR.

The MCA urges providers to be mindful of the possibility that at the time of the conclusion of the contract (or at the time when such 'price indexation clauses' were introduced in end-user contracts) a number of end-users, may have overlooked or did not fully comprehend the negative consequences that such 'price indexation clauses' could have if such clauses are enforced by their provider. To this effect, with reference to the measures included in 'Decision 4 – Part B' above, the MCA strongly recommends, that providers who are considering enforcing the 'price indexation clause' of contracts concluded with end-users prior to the publication and the coming into force of this Decision Notice and which are still within the initial six (6) month contractual period, enable end-users to rescind their contract without incurring any penalties. Adopting such a proactive stance by providers, would be consistent with the commitment to ensuring fair and transparent contractual practices in the sector.

4.6 Introducing 'Price Indexation Clauses' to 'Existing Contracts'

4.6.1 MCA's Proposal

MCA's consultative document proposed that providers of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services introducing (or amending) 'price indexation clauses' to existing contracts shall ensure that any notifications to consumers informing them of such changes:

1. do not exceed the equivalent of a one (1) single-sided A4 page when printed with an easily readable font;
2. only contain information regarding the clauses referred to in the first paragraph of this decision being introduced (or amended) to the existing contract. This proposal also provided that if together with the modifications being referred to in the first paragraph of this decision, the provider intends to implement additional unrelated contractual modifications, any such additional unrelated modifications need to be notified to consumers in a separate notification on a durable medium; and
3. shall be sent in accordance with regulation 92(2) of the ECNSR and MCA's decision titled ['Contracts, Transparency and Termination'](#).

4.6.2 Feedback received and MCA's final decision

Four (4) respondents supported and agreed with MCA's proposal as outlined in section 4.6.1 above. Another respondent objected to some requirements included by the MCA in this proposed decision whereas another respondent requested some clarifications regarding this proposal. This section discusses the feedback received in response to MCA's proposal as outlined in section 4.6.1 above and provides MCA's considerations and clarifications to these submissions.

One (1) respondent stressed the importance that the text included in the notifications is sufficiently clear. The MCA considers that regulation 92(2) of the ECNSR and Decision 5 of MCA's Decision Notice titled 'Contracts, Transparency and Termination' requires providers to ensure that the content of the notifications regarding modifications of contractual conditions to be sent to consumers are clear and comprehensive. The MCA will closely monitor any notifications which providers may send in this regard to ensure that such requirements are adequately observed.

This respondent also suggested that when introducing 'price indexation clauses' to existing contracts, besides containing information about such 'price indexation clauses' notifications should also inform consumers that when implementing adjustments in accordance with such 'price indexation clauses', such notifications should also inform consumers that such 'price

indexation clauses' consumers will not be provided the possibility to rescind their contract without incurring any penalties. The MCA agrees with this respondent's views in order to avoid any possible misinterpretations, the MCA is adding text in 'Decision 5' hereunder to clarify that such notifications regarding 'price indexation clauses' shall also inform consumers whether they will be able to rescind their contract without incurring any penalties when the providers increases the charge/s and/or fee/s of their service/s plans.

Further to a request received from a respondent, the MCA clarifies that the requirement stating that any notifications to consumers 'shall not exceed the equivalent of a one single-sided A4 page' means that notifications to consumers shall not exceed the equivalent of a one single-sided A4 page for each language in which such notification is sent. Therefore, providers sending notifications in both Maltese and English languages may use the equivalent of a one single-sided A4 page for the Maltese version and the equivalent of another one single-sided A4 page for the English version.

One (1) respondent requested the MCA to clarify that notifications may still be sent via electronic means. The MCA confirms that notifications may be sent via electronic means in 'durable medium' format as defined in regulation 2 of the ECNSR. Further guidance on the provision of information in 'durable medium' has been provided in section 6.2 of MCA's decision titled 'Contracts, Transparency and Termination'.

One respondent requested the MCA to confirm that *'should the proposed changes concerning inflation be (i) exclusively to the benefit of the end-user, (ii) purely of an administrative nature and have no negative effect on the end-user or (iii) is directly imposed by EU law, as established in regulation 92(1) of the ECNSR, amendments Inflation Clauses will be treated accordingly and end-users shall not have the right to terminate without penalty'*. The MCA clarifies that each proposed contractual modification would need to be evaluated on its own merits. Nevertheless, providers who deem that their proposed contractual modification fit any of the criteria referred to in points (i), (ii) or (iii) above, may send a written request to the MCA in accordance with Decision 7 of MCA's decision titled ['Contracts, Transparency and Termination'](#). If MCA's evaluation determines that the proposed contractual modification fit any one of the criteria referred to in points (i), (ii) or (iii) then the MCA will grant providers the possibility to implement the said proposed changes without the need to provide consumers the possibility to rescind their contract without penalties. The MCA clarifies that in all instances including where the MCA grants a waiver in accordance with Decision 7 of MCA's decision notice titled ['Contracts, Transparency and Termination'](#), providers are required to notify consumers about the modifications to the contractual conditions they intend to introduce on a durable medium.

One respondent objected to the proposal which suggested that notifications about contractual modifications concerning 'price indexation clauses' should only contain information regarding such 'price indexation clauses' and that if a provider intends to implement additional unrelated contractual modifications, any such additional unrelated modifications need to be notified to consumers in a separate notification on a durable medium. This respondent stated that in such circumstances (i.e. if providers are required to send multiple notifications simultaneously)

one of the notifications might be ignored or consumers might be given the impression that the notification relating to 'price indexation clauses' takes priority over other unrelated contractual modifications being notified in a separate communication. The MCA disagrees with this respondent's views and considers this measure to be an important safeguard to ensure that information notifying consumers about contractual modifications relating to 'price indexation clauses' is not overlooked by consumers and is not lost in the midst of other information concerning other contractual modifications.

In view of the above considerations, the MCA is retaining the proposal included in its consultation in this Decision Notice with the inclusion of some minor amendments as explained above.

Decision 5

Providers of publicly available ECS other than NI-ICS and other than transmission services used for the provision of M2M services introducing (or amending) clauses to existing contracts which enable them in future to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution, shall ensure that consumers are notified about such changes, and that such notifications shall:

1. Include detailed information about the clause being introduced including clear information on whether consumers may rescind their contract without incurring any penalties when the charge/s and/or fee/s of their service/s plans are increased;
2. not exceed the equivalent of a one single-sided A4 page when printed with an easily readable font;
3. only contain information regarding the clauses referred to in the first paragraph of this decision being introduced (or amended) to the existing contract. For the avoidance of any doubt, if together with the modifications being referred to in the first paragraph of this decision, the provider intends to implement additional unrelated contractual modifications, any such additional unrelated modifications must be notified to consumers in a separate notification on a durable medium; and
4. be sent in accordance with regulation 92(2) of the ECNSR and MCA's decision titled ['Contracts, Transparency and Termination'](#).

4.7 Notification to the MCA Regarding Adjustments in Charge/s and/or Fee/s in Accordance with ‘Price Indexation Clauses’

4.7.1 MCA’s Proposal

MCA’s consultative document proposed that when implementing increases in any charge/s and/or fee/s in accordance with ‘price indexation clauses’, providers notify the MCA at least ten (10) working days in advance of such increase. MCA’s proposal provided that the notification to the MCA shall:

- (i) specify which service/s plans which will be impacted;
- (ii) specify all the charge/s and/or fee/s however so described which will be increased;
- (iii) the amounts by which such charge/s and/or fee/s however so described will be increased;
- (iv) the computation used to work out the increases being implemented; and
- (v) the objective official consumer price index issued by the competent public entity used to determine the increases being implemented.

4.7.2 Feedback received and MCA’s final decision

Two (2) respondents supported and agreed that this proposal is retained in MCA’s final ‘decision notice’.

Another (1) respondent stated that the information to provide to the MCA as proposed in MCA’s consultative document is too cumbersome for providers to adhere to in view of the array of service/s plans and discounts which are offered by providers and which may be affected by such adjustments. This respondent suggested that instead providers should only be required to indicate the objective ‘consumer price index’ used to determine such price increases. Similarly, another respondent objected to the proposal that providers should provide the MCA with the information included in point (iii) and (iv) above and requested the MCA to clarify whether it would be sufficient to include instead a reference to a hyperlink diverting the MCA to NSO’s objective consumer price index being used by the provider to calculate the increases of charge/s and/or fee/s of their service/s plans.

The MCA firstly clarifies that the proposal requiring providers to notify the MCA about any increases in charge/s and/or fee/s of service/s plans was intended to enable the MCA to monitor trends and practices in the sector. This can only be achieved if the MCA is provided with sufficient information about increases in charge/s and/or fee/s of service/s plans which providers may decide to implement in accordance with ‘price indexation clauses’ in a timely manner. To this effect, the MCA considers that it is necessary that points (i), (ii) and (iii) are retained in MCA’s final decision. With reference to points (iv) and (v), the MCA agrees that if providers were to only indicate to the MCA the objective consumer price index being used to calculate the increases of charge/s and/or fee/s of their service/s plans, then such information

would suffice to enable the MCA to better comprehend how such increases have been determined. In view of this, point (iv) (as included in MCA's consultative document) will be removed and point (v) (as included in MCA's consultative document) only will be retained in MCA's final decision notice along points (i), (ii) and (iii) referred to previously. The MCA nevertheless, reserves the right to request additional information from providers on the increases being implemented should the need arise.

One respondent requested the MCA to clarify whether the advance notification to the MCA should be sent ten (10) working days prior to implementation of such increase or ten (10) working days prior to notifying the consumers of the increases in charge/s and/or fees of their service/s plans. Another respondent suggested that such notice period ought to be streamlined with that of 'Decision 7' found in MCA's decision titled 'Contracts, Transparency and Termination', and thus reduced to five (5) working days. One respondent also requested clarification on whether providers should utilise the same method of notification it makes use of when notifying the MCA of any contractual changes.

The MCA considers that when implementing such increases, providers may also increase several charge/s and/or fee/s of a vast number of service/s plans concurrently. Furthermore, drawing on the Authority's experience, it is anticipated that a number of affected consumers may reach out to the MCA's consumer support team to seek feedback and guidance on their given circumstances. In view of this, the MCA considers that it should retain the pre-advanced notification period of ten (10) working days in its final decision as this pre-advanced notification period would enable it to understand the extent of the adjustments being applied and be in a position to handle efficiently requests for assistance which it might receive from impacted consumers. The MCA also clarifies that it requires that such notifications are to be sent to the MCA (10) working days prior to notifying the consumers of the increases in charge/s and/or fees of their service/s plans. In order to avoid any ambiguity, the below 'Decision 6' has been amended to include newly added text to reflect this clarification.

The MCA wishes to reiterate that the notifications to be sent in accordance with the above proposed decision are to be sent to the MCA in order to enable it to monitor trends and practices in the sector. Whilst the MCA may at its discretion provide its views on the content included in the said notifications, any such feedback by the MCA should not be construed as constituting any form of approval by the MCA of the notification or its contents including any adjustments in any charge/s and/or fee/s of service/s plans. Such notifications shall be without prejudice to any action that may be taken by any relevant enforcement body, including the MCA, should it result that any increases are in breach of any applicable law or decisions. In cases where providers need to seek regulatory guidance regarding aspects related to the increases they wish to implement, they are encouraged to write to the MCA seeking its feedback, doing so well in advance of any communication of notifications regarding increases to charge/s and/or fee/s of service/s plans. Providers may wish to adhere to the process of notification which providers are required to make when notifying the MCA of any contractual changes.

Decision 6

When implementing increases in any charge/s and/or fee/s however so described in accordance with existing contractual clauses which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution, providers shall notify the MCA at least ten (10) working days in advance of such increase. The notification to the MCA shall:

- (i) specify which service/s plans which will be impacted;
- (ii) specify all the charge/s and/or fee/s however so described which will be increased;
- (iii) the amounts by which such charge/s and/or fee/s however so described will be increased; and
- (iv) The objective consumer price index used to determine the increases being implemented.

4.8 Notification to Consumers Regarding Adjustments in Charge/s and/or Fee/s in Accordance With ‘Price Indexation Clauses’

4.8.1 MCA’S Proposal

MCA’s consultative document proposed that when implementing increases in any charge/s and/or fee/s however so described in accordance with ‘price indexation clauses’, providers shall notify impacted consumers about such increases on a durable medium at least thirty (30) calendar days in advance of such increases.

4.8.2 Feedback received and MCA’s final decision

Four (4) respondents supported MCA’s proposal whilst another respondent suggested that the first line of the notification to consumers should *‘prominently feature the price increase due to the implementation of the inflation clause’*. The MCA acknowledges the benefits of the proposal made by this respondent. The MCA however is also cognisant of the fact that besides increasing the ‘periodic access fee’ of their service/s plans, providers could also increase a number of the charge/s and/or fee/s applicable to consumers. In such cases, it would not be possible to fit all the increases of all the charge/s and/or fee/s being implemented by the provider in the subject of the notification. For this reason, the MCA considers that it would be more appropriate if the subject of the notification were to be more generic and instead

indicate in a clear and prominent manner that the notification relates to an increase of charge/s and/or fee/s of the consumers' service/s plans. The MCA shall not establish the exact wording which is to be included in the subject of the notification but reserves the right to introduce new requirements in this regard should the need arise. 'Decision 7' hereunder has been amended to include newly added text in order to include this requirement.

Decision 7

When implementing increases in any charge/s and/or fee/s however so described in accordance with clauses which enable providers to increase any charge/s and/or fee/s however so described of their service/s plans by an amount which corresponds to an objective consumer price index compiled by a public institution, providers shall notify impacted consumers about such increases on a durable medium at least thirty (30) calendar days in advance of such increases.

The subject of the notification to consumers shall indicate in a clear and prominent manner that the notification relates to an increase in charge/s and/or fee/s of the service/s plans to which the consumers are subscribed to.

4.9 Applicability of this Decision Notice to 'Bundles' and to 'Microenterprises, Small Enterprises and Not-For-Profit Organisations'

4.9.1 MCA's Proposal

In its consultative document the MCA proposed that the decisions listed in this Decision Notice shall also apply to the provision of service/s 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.

The MCA also proposed that the decisions listed in this Decision Notice also apply to bundles of services or bundle of services and terminal equipment which comprise at least an IAS, NB-ICS or a transmission service used for broadcasting.

4.9.2 Feedback received and MCA's final decision

Three (3) respondents stated that they had no objections to these proposals. Another respondent stated that due to the nature of business relationships, it is important that the framework within which business contracts operate is not heavily amended. According to this respondent, by way of example, it is not feasible to apply a maximum contractual period of six (6) months to business tailor made agreements as this would require providers and businesses to renegotiate business contracts every six (6) months and this may impact customer relationships. This respondent reiterated that the proposal it submitted (i.e. that any

increases in prices implemented by providers in accordance with 'price indexation clauses' are capped by a maximum increase of 4.9%) and which was duly covered in Section 4.2 of this Decision Notice, is in its view the only way forward to ensure transparency and certainty for all parties involved in telecommunication contract.

The MCA clarifies that it considers that the feedback it provided in Section 4.2 of this Decision Notice in reaction to this respondent's proposal also applies within the context of contracts concluded with microenterprises and small enterprises, and not-for-profit organisations containing 'price indexation clauses'. The MCA contends that the measures included in this Decision Notice should benefit not only consumers, but also microenterprises and small enterprises, and not-for-profit organisations as defined in national law, and these businesses should therefore receive the same level of protection as consumers unless such businesses explicitly waive these rights.

This respondent also stated that if such a proposed decision whereby end-users that are microenterprises, small enterprises or not-for-profit organisations have the right to explicitly agree to waive all or part of the proposed decisions to be implemented, providers should be given the autonomy to determine the best manner whereby such a waiver can be implemented vis-a-vis their business agreements.

The MCA confirms that providers have the autonomy to determine the process for microenterprises and small enterprises, and not-for-profit organisations to submit a waiver from the applicability of these rights and that for the time being the MCA is refraining from introducing requirements to be adhered to by providers in this regard. The MCA reserves the right to introduce additional measures on such processes if it considers such action necessary to protect the interests of such microenterprises and small enterprises, and not-for-profit organisations.

In view of the above considerations, the MCA is retaining the proposal included in its consultative document and referred to in Section 4.9.1 of this final Decision Notice.

Decision 8

The decisions listed in this 'Decision Notice' also apply to the provision of service/s 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.

The decisions listed in this 'Decision Notice' also apply to bundles of services or bundle of services and terminal equipment which comprise at least an IAS, NB-ICS or a transmission service used for broadcasting.

5 Applicability of MCA's Final Decision Notice

5.1.1 Proposal on Timeframes included in MCA's Consultation

MCA's consultation proposed that the decisions contained in MCA's Decision Notice become applicable with immediate effect upon publication of MCA's final decision with the exception of proposed decisions 1 and 2 (now 'Decision 1' and 'Decision 3' respectively) which shall become applicable within thirty (30) calendar days from publication of the Decision Notice.

5.1.2 Feedback received and MCA's final decision

One (1) respondent stated that if the measures proposed were to be implemented this will require a number of internal administrative technical and/or operational changes and discussions. This respondent stated that the applicability timeframes proposed by the MCA are not achievable and proposed a longer period of implementation which should not be shorter than ten (10) months.

The MCA has carefully considered this respondent's request. While the MCA agrees to extend the implementation timeframe of certain decisions outlined in this Decision Notice, it cannot adopt the 10 (ten) month implementation timeframe proposed by this respondent. Doing so would effectively prolong the exposure of end-users to the consequences of the current use of 'price indexation clauses' the inclusion of which clauses the MCA considers may be detrimental to end-users.

As stated throughout this Decision Notice, the MCA is concerned that the application of 'price indexation clauses' by providers without the implementation of a minimum set of protection measures may negatively impact end-users. Therefore, the MCA must strive to strike a balance between the interests of end-users and the providers' needs.

To this effect, the MCA is hereby extending the timeframe for the implementation of 'Decisions 1, 2 and 3' to three (3) months from the date of publication of this Decision Notice. Additionally, the MCA is also allowing that the timeframe for the implementation of 'Decision 4 Part A' be of 1 (one) month from the date of publication of this Decision Notice. The MCA wishes to clarify that it considers that the measures provided for in 'Decision 4 Part A' need to be implemented with utmost urgency as this would, in MCA's opinion, considerably reduce the negative impact which 'price indexation clauses' could have on end-users if enforced by providers. The MCA determines that the remaining decisions (Decisions 4 Part B, 5, 6, and 7), shall become applicable immediately upon the publication of this Decision Notice. The dates of applicability for Decisions 1 to 7 also extend to the subjects covered under Decision 8 of this Notice.

The below table summarises the date of applicability of each decision included in this Decision Notice for ease of reference.

Table - Dates of Applicability of Decisions contained in this Decision Notice

Decision Number	Title	Date of Applicability
Decision 1	Website Transparency	8th March 2024
Decision 2	Additional Information to be Included in the Contract Summary	8th March 2024
Decision 3	Consumers' Explicit Consent	8th March 2024
Decision 4 - Part A	Maximum Contractual Commitment Period	8th January 2024
Decision 4 - Part B	Maximum Contractual Commitment Period	7th December 2023
Decision 5	Introducing 'Price Indexation Clauses' to 'Existing Contracts	7th December 2023
Decision 6	Notification to the MCA Regarding Adjustments in Charge/s and/or Fee/s in Accordance with 'Price Indexation Clauses'	7th December 2023
Decision 7	Notification to Consumers Regarding Adjustments in Charge/s and/or Fee/s in Accordance with 'Price Indexation Clauses'	7th December 2023
Decision 8	Applicability of this Decision Notice to 'Bundles' and to 'Microenterprises, Small Enterprises or Not-For-Profit Organisations	7th December 2023 / 8th January 2024/ 8th March 2024*

**The dates of applicability for Decisions 1 to 7 also extend to the subjects covered under Decision 8*



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