

Utility Warehouse response to ASA consultation in relation to the Guidance on the presentation of mid-contract price rises in telecoms ads

Summary

Utility Warehouse welcomes the opportunity to respond to ASA's consultation on the Guidance on the presentation of mid-contract price rises in telecom ads. We agree with the importance of providing prospective customers with the information based on which they can make an informed transactional decision. However, we question whether the proposal will have the desired effect because of the reasons set out below. We suggest the ASA takes into account all information provided to customers in their purchase journey and then assesses if their proposals are still beneficial to consumers, by carrying out consumer testing. We also consider there is a difference in 'tiered pricing' and 'variable' pricing which is not reflected in the current proposals.

Assessment

It is important to see the ASA proposals in a wider context. In June this year, Ofcom put in place detailed rules and guidance about price information in general and tiered / mid-contract price increases in particular to which the ASA refer in the consultation. Under Ofcom rules, providers have to meet a number of requirements:

1. Customers should be sent a contract summary prior to them taking out a contract. The contract summary is prescriptive in both form and content to allow customers to easily compare offers from different providers.
 - It includes the following on price information, among other: 'For electronic communications services provided for direct monetary payment, this section shall include the prices for activating the service and recurring or consumption-related charges. For subscription contracts, the recurring price, inclusive of taxes, per billing period and, if the billing period is other than monthly, also per month shall be included.'
 - It includes the following on contract duration, among other: 'The information on the duration of the contract in months and the main conditions for its renewal and termination due to the end of the contract duration and to early termination, where applicable, shall be included in the contract summary.'
2. Customers should also be sent contractual information prior to them taking out a contract. The information on price and duration is similar to the information included in the contract summary.
3. In relation to mid-contract price rises, Ofcom's guidance on contract requirements are relevant. On so-called tiered pricing, Ofcom set out that 'where a provider is offering a package in which the Core Subscription Price is set out on the basis described in the paragraph above (i.e. tiered), an estimate of the price, including any increment for inflation, should be included, in an accessible way, such that the customer has an indication of how the relevant inflation index

might affect the price they will pay. This means that stating that there will be an (unspecified) uplift to the Core Subscription Price in line with a particular inflation index is unlikely to be sufficient. For example, text which states “In April 2020 your price will increase by an amount equal to the RPI rate published in March of that year” does not make clear to the customer what the impact on their Core Subscription Price will be. Instead, we expect providers to provide an example to the customer of how such a price term is likely to affect the price they will pay. If the increase is by reference to an inflation index, then providers should use the most recent value of that index. As an example, this additional clarification could read: “For example, using last year’s RPI value of 2%, this would mean your monthly price of £40 would increase to £40.80 from April next year”

We consider that the advertising of a telecoms service and the pre-contractual and contractual information provided during the sign-up process should be considered in conjunction because the two combined will provide all the information a customer will receive. Customers are unable to take out a contract without being presented with all the pre-contractual information required by Ofcom.

In this context, we consider the following points need to be addressed in relation to the ASA proposals:

1. What is the right balance in terms of material information to be provided to customers at the different stages of their journey?
2. What do the ASA proposals add?
3. Are there other safeguards in place that address price changes?

The ASA proposal is to include more detailed information about tiered and variable pricing as part of, or adjacent to the price claim. As set out above, all this information is already provided to the customer when they take the next steps in taking out a contract, and all the information is provided pre-sale, meaning customers don’t find out after they have taken out a contract, but before. Based on the information, they can still decide to not go ahead with their transaction. We consider that the material information in the advertising stage is the monthly price, and that qualification text is sufficient in explaining if the price is variable in nature. If customers are interested and continue their buying journey, they will be presented with very clear examples, including a calculation, explaining the detailed working of the tiered pricing. In addition, presenting similar information twice, but in a slightly different way, risks confusing prospective customers.

The ASA proposal emphasises the prominence point in the consultation. There is only so much information that can be made prominent before it will get absorbed in the overall amount of information and lose its prominence. We recommend the ASA tests its assumptions with consumers before taking a final decision on its guidance and to include the buying journey as well.

The ASA proposal risks adding complexity to the advertising, which not all consumers may be able to engage with. The sheer amount of information can also result in

information overload and potentially lead to customers ‘switching off’ and not engaging with the advertising and therefore cancelling their search and staying on potentially less favourable plans or terms.

Ofcom’s new rules only took effect in June this year. We suggest the ASA assess the effects of the additional information that is currently presented to providers pre-sale, and take into account these results before deciding on their proposals.

The ASA proposal suggests the same treatment for tiered pricing and variable pricing. We consider there is a clear distinction. Tiered price increases (subject to sufficient transparency and prominence) are part of a contract and are not considered as contractual changes. Variable pricing is where the contract includes a clause that prices may go up during the minimum contract term. They are considered to be contractual modifications and therefore subject to specific rules. Contractual changes need to be notified to customers with at least 30 days’ notice and customers need to be given the right to leave with penalty. We consider that including a statement in advertising that prices may rise during contract does not provide the customer with any material information. We note that Ofcom has no price information requirements regarding these price increases, presumably because the rules around notification and right to leave are deemed sufficient to deal with these.

Consultation questions

Below we provide a summarised response to the consultation questions based on our assessment above.

1. Do you agree with the guidance principles set out above?

We agree with the importance of providing clear information but consider the ASA should take into account the wider context of the telecoms sales journey in which a great amount of information is being provided to customers. There is a risk that consumers are unable to absorb the amount of information or that they get confused about the information provided to them, which might stop them from engaging with the market.

2. Do you agree with taking the same approach to ads for both tiered and variable contracts, in terms of the level of prominence expected for information about mid-contract price increases?

We consider there is a distinction between tiered and variable contracts, as set out above, with specific regulatory rules around the different types of contracts.

3. Do you have any comments on the use of terms used to describe rates of inflation such as CPI and RPI, and the level of understanding consumers have of these terms (including when they are referred to using an initialism only)?

In our assessment above we suggested the ASA tests its proposals before taking any decisions. Terminology around inflation and /ot initialism is one of the important things to be tested.

4. Do you agree with the mitigating factors listed as having the potential to cause an advertiser to take additional action in order to ensure material information relating to in-contract price increases is sufficiently clear?

It is unclear what is meant by the mitigating factors which could cause an advertiser to take additional action.

5. Do you agree that in instances where multiple offers/products appear on one page (for example, on a telecoms provider's own website), it may be sufficient for prices to link or refer to a suitably-prominent single piece of information about mid-contract price increases, rather than including this information within each individual product listing?

Yes.

6. Do you have any other comments or suggestions in relation to the proposals?

As set out above, we consider the ASA should take into account the wider customer journey and the information that is provided at each stage. In addition, we strongly recommend testing any of the proposals with consumers before deciding on any further action.