

Regulators in some mature telecoms markets are starting to react to operators' retail pricing practices

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Increasing competition has allowed regulators to reduce the use of retail price regulation over time

For many years, the trend in mature telecoms markets in developed countries has been for regulators to reduce the use of retail price regulation in preference for wholesale price regulation or even deregulation, leaving the “invisible hand” of competition to do its job.

The results of this trend are shown by the declining list of relevant product and service markets susceptible to ex-ante regulation within the European Union (EU): in 2003,¹ there were 18 markets (7 of which were retail markets) but by 2020,² this had fallen to only 2 markets (of which none were retail).

Recent retail pricing practices are starting to lead to reactions from some regulators

Telecoms markets in developed countries have been characterised for many years by high market penetration, competition around headline prices for specific flagship products and the need for high network investment in new technologies such as fibre broadband and 5G. Some operators have responded to these challenges to their revenue growth by adopting some new retail pricing practices that, while legal (as long as done transparently), could be considered to be contentious or unfair given the current concerns about the cost of living, particularly for poorer customers. Some regulators have started to react to these practices (see Figure 1).

Figure 1: Examples of contentious retail pricing practices and reactions from some regulators

Practice	Description	Examples of regulators' reactions
Above-inflation annual price increases	The operator increases prices, either when customers are in-contract or out-of-contract, by substantially more than inflation (for example, inflation + x%).	<ul style="list-style-type: none"> Ofcom in the UK announced a review of inflation-linked telecoms price rises.³ AGCOM in Italy is consulting on a regulation that would ban price increases above inflation and provide for a price decrease in the event of negative inflation (deflation).⁴ HAKOM in Croatia issued an opinion related to the possibility of harmonising the prices of

¹ EUR-Lex (11 February 2003), [Document 32003H0311](#)

² EUR-Lex (18 December 2020), [Document 32020H2245](#)

³ Ofcom (2023), [Ofcom to review inflation-linked telecoms price rises](#).

⁴ Autorità per le Garanzie nelle Comunicazioni (4 April 2023), [Delibera 89-23-CONS - Documento - AGCOM](#).

Practice	Description	Examples of regulators' reactions
Add-on fees (also known as junk fees in North America)	<p>The operator charges add-on fees for services such as:</p> <ul style="list-style-type: none"> domestic roaming (for example, in the USA) international roaming out-of-plan usage (also known as 'overage charges' in North America) service cancellation. 	<p>public communication services with the annual rate inflation (price indexation).⁵</p> <ul style="list-style-type: none"> The FTC in the USA announced that it was exploring a rule to crack down on junk fees.⁶ CRTC in Canada received a new policy direction from the federal government that requires it to "address unacceptable sales practices and improve transparency and clarity of service pricing."⁷ International roaming between EU member states has been regulated since 2007 by the European Commission (EC), with the final stage of this being a retail pricing constraint ("roam like at home") because the wholesale price regulation had not had the desired effect.⁸ Ofcom in the UK proposed new rules in July 2023 to introduce new roaming alert protections for consumers and small businesses.⁹
Potentially socially disadvantageous pricing structure	<p>The operators' price structures may not support socially disadvantaged consumers because there is more competition for 'flagship' products, or because their social tariffs are not marketed/used or are too narrowly targeted.</p>	<ul style="list-style-type: none"> Ofcom was concerned that single-play, voice-only customers were not gaining the benefits of competition and took ex-ante regulatory action (it eventually negotiated commitments with BT, rather than imposing formal remedies).¹⁰ The House of Lords in the UK held a hearing in March 2023 on digital exclusion and the cost of living, where the role of social tariffs was discussed.¹¹ Ofcom in the UK has asked providers that are not offering a social tariff to do so, and for providers to promote these tariffs to low-income households and to consumers on government benefits.¹²
Loyalty penalty ¹³	<p>The operator charges more to existing customers than new customers for the same service.</p>	<ul style="list-style-type: none"> Ofcom in the UK announced agreements with several telecoms providers to ensure out-of-contract customers could get the same deals for broadband services as those available to new customers, if they agree to a new service contract.¹⁴

⁵ Hakom (2022), *Predmet: Stručno mišljenje o mogućnosti uvođenja usklađenja cijena javnih komunikacijskih usluga s godišnjom stopom inflacije*.

⁶ Federal Trade Commission (20 October 2022), *Federal Trade Commission Explores Rule Cracking Down on Junk Fees*.

⁷ Government of Canada (26 May 2022), *Summary of the Government of Canada's new policy direction to the CRTC*.

⁸ European Commission, *The history of Roaming*.

⁹ Ofcom (20 July 2023), *New mobile roaming alert protections for UK holidaymakers*.

¹⁰ Medium (26 October 2017), *Ofcom has intervened to cut the bills of loyal landline-only customers*.

¹¹ UK Parliament (7 March 2023), *Digital exclusion and the cost of living - Oral evidence*.

¹² Ofcom (15 February 2022), *Millions of low-income families missing out on £144 annual broadband saving*.

¹³ For more information, see Analysys Mason's *Protecting consumers from themselves*.

¹⁴ Ofcom (9 January 2020), *Ofcom's 2019 Fairness for Customers highlights*.

Practice	Description	Examples of regulators' reactions
		<ul style="list-style-type: none"> The Irish parliament has introduced a bill to amend the Consumer Protection Act that would ban "(charging) consumers who are renewing their subscription a higher fee than the trader charges consumers who are new subscribers."¹⁵

While a return to retail regulation in general is unlikely, regulators are likely to continue focusing on specific retail pricing practices

The controversial retail pricing practices of some operators in mature markets have attracted reactions from regulators and policy makers in the form of inquiries or further regulations.

This is not, however, likely to be a precursor for a general return of retail regulation for the following reasons.

- In some countries, competition from challenger operators is acting as a disincentive to engage in contentious or unfair retail pricing practices for fear of losing market share.¹⁶
- Regulators want to protect consumers while not disincentivising investment in new technologies such as fibre broadband and 5G.
- Regulators realise that heavy-handed interventions can be a case of "the cure being worse than the disease."¹⁷
- In practical terms, reintroducing retail price regulation is not straightforward (for example, as noted above, under the EU Framework, the recommendation on relevant markets susceptible to ex-ante regulation does not include retail markets).

Instead, regulators are likely to continue to focus on operators' controversial retail pricing practices, both through general consumer protections (such as transparency) and by concentrating on pricing practices that are seen to result in the worst impacts in terms of fairness and equality for the poorest in society.

This is a fine balance to strike, and will need a combination of industry engagement, proportionate regulation, fair business practice and a collaborative approach to solving some of the cost pressures and economic issues in today's macroeconomic environment. Expert commercial pricing, socioeconomic and regulatory advice can assist.

For further details about how Analysys Mason can support you with any of the issues outlined in this article, please contact [Gilles Monniaux](#) and [Ian Streule](#).

¹⁵ Houses of the Oireachtas (18 February 2021), *Consumer Protection (Loyalty Penalty and Customer Complaints) Bill 2021*.

¹⁶ For more information, see Analysys Mason's *Challenger operators in Europe have gained subscriber market share by keeping prices flat*.

¹⁷ For more information, see Analysys Mason's *Retail price caps: sometimes the cure is worse than the disease*.