

NEXUS BETWEEN COMPETITION AND CONSUMER PROTECTION POLICIES

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EXECUTIVE SUMMARY

CCCS has newly taken up the role of consumer protection aside from promoting competition and inhibiting antitrust behaviour in the market. While acknowledging the distinctive nature of consumer protection policies and pro-competition policies, the challenge falls onto CCCS to identify both the intersection of these two areas and the conflicts between them. Despite the consistent and historical efforts in ensuring that supply forces operate smoothly in the market, CCCS needs to keep in mind of the new requirements to collectively benefit consumer welfare by using consumer protection and pro-competition policies either simultaneously or selectively.

The B2C e-commerce market in Singapore has groomed over the years. It has always remained as an area of implicit competition due to technological advancements. When looking into this emerging e-commerce market, we identified potential information failure caused by the lack of market transparency and possible collusive behaviour in the form of price matching and vertical restraints. It is notable that some of these anti-competitive behaviours may harness consumer welfare and the policies suggested that entirely eliminate the restraints to promote competition can potentially damage consumer welfare. Hence, based on the different root causes of the problems, we have suggested policies to tackle different restraints and weigh the general impacts on consumers if the policies are carried out.

Other than suggesting specific policies targeting at B2C e-commerce market, we have also identified other areas that still have room for improvement in the retail market, such as the membership system used by CASE to issue a complaint against retailers. We also suggested adapting other nations' regulations to tackle the

problems in Singapore. However, other countries' context may not perfectly suit in Singapore's context with different emphasis and market background. Any policy implemented should be reviewed on a case-by-case basis to allow more scope of investigation and solution.

(word count: 300)

INTRODUCTION

Pro-competition and consumer protection policies both aim to harness consumer welfare by removing market distortions. The former targets at removing antitrust behaviour within the market to ensure fair trade, accurate information so that consumers have sufficient choices at affordable prices. Consumer protection policies tackle demand side issues to help consumers make wise choices based on accurate information, free from the harm of unethical marketing activities.

Despite pro-competition and consumer protection policies being complementary in nature, there is a possibility that under the context of promoting competition, the producers may complicate price and quality competition or undertake strategies to avoid direct and transparent competition thus damaging consumer welfare.

Consumer welfare is determined by the price and quality of the product, the variety of choices available, and the ability to avoid potential frauds or problematic marketing practices such as bait and switch. Competition policies in some jurisdictions specifically state that competition acts should *'provide consumers with competitive prices and product choices'*(Canada Competition Act 2010)

ONE AGENCY, TWO MISSIONS

The expansion of CCCS to take up the responsibility of consumer protection on top of its role in promoting healthy competition requires CCCS to examine the links and conflicts between the two approaches. In general, competitive markets spur firms to be more responsive to consumer needs. Consumers benefit as a higher intensity of competition forces firms to be more productive efficient and to pass cost-savings on to consumers in the short run. In the long run, competition stimulates innovation so that consumers are able to enjoy better quality products and higher autonomy in selection. (Bill J, 2011)

Consumer policies also contribute to competitive markets by addressing information asymmetries, thereby allowing consumers to make more informed decisions. This, in turn, promotes competition by forcing producers to improve the competitiveness of their products¹ to better meet informed consumers' needs.

Moreover, consumer protection policies and competition policies can harmonise because they use the same set of policy tools - enforcement (Competition Act and CPFTA), business advocacy and consumer education.

Another potential common tool identified by U.S. Federal Trade Commission is policy research and development through information gathering, report writing, holding conferences and workshops on important competition issues, and academic-style

¹ In terms of quality and price-competitiveness of their products

research. In this area, learning from one mission informs and improves efforts in the other. (Ohlhausen M. K, 2014)

Meanwhile, we should recognise that conflicts may lie between consumer protection policies and pro-competition policies in certain contexts. For example, protecting consumers against unqualified products requires producers to present substantiation of their qualifications or testimonials which may pose entry barriers.

At a minimum, any legitimate issues against consumer protection should be recognised and balanced against harmful ends of competition whenever potential pro-competition measures may override consumer protection concerns.

Currently, antitrust laws (Singapore Law chapter 27) prohibit 3 main types of activities:

- anti-competitive agreements, decisions, and practices;
- abuse of a dominant position;
- mergers which substantially lessen competition.

THE E-COMMERCE MARKET IN SINGAPORE

We will focus on Business-to-Consumer (B2C) model in this essay which is an e-commerce model that denotes online sales between businesses and consumers, specifically online shopping websites. This market is chosen because it is emerging with rapid technological changes and fast incoming new players including both retailers and consumers. Enforcement and regulations must be revised and updated consistently to resolve concerns about unfair practices and antitrust marketing behaviors damaging consumer welfare simultaneously.

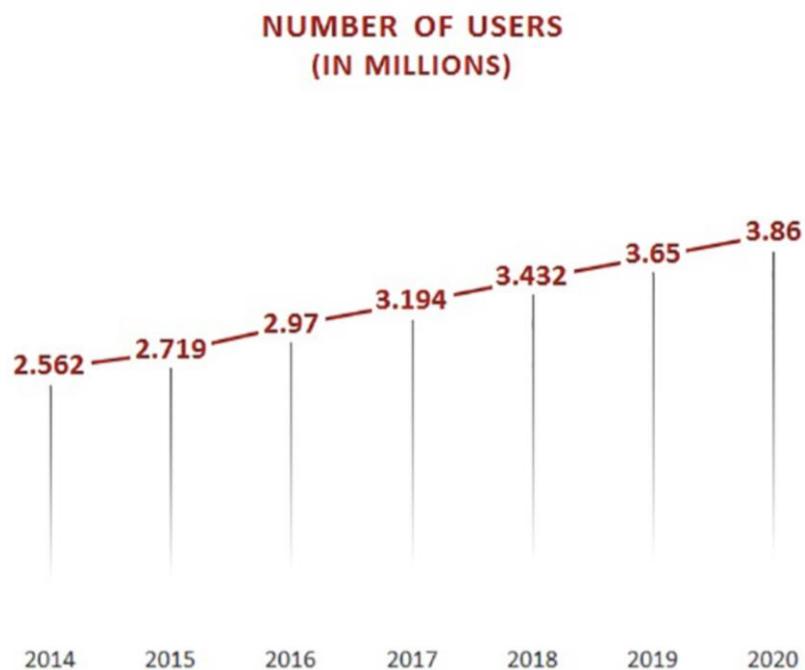


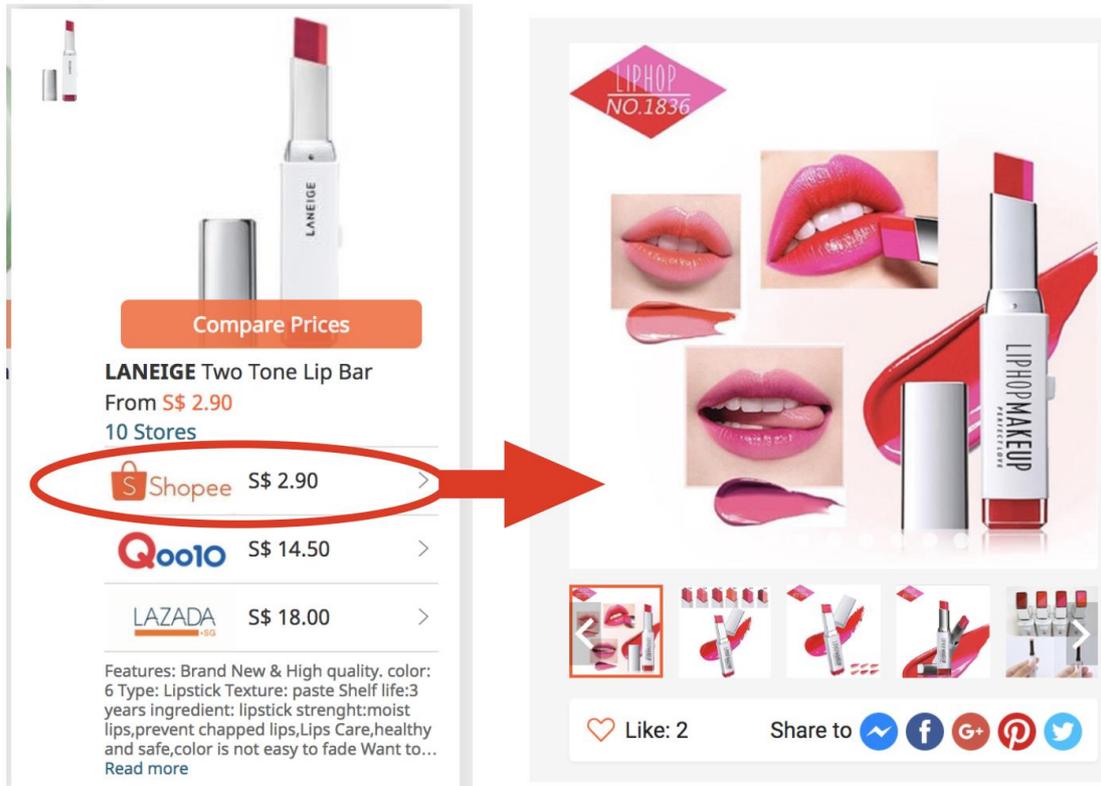
Figure1: Increasing number of online buyers

Singapore's online B2C marketplace has a few dominant foreign marketplaces that offer a wider range of products at lower prices such as E-bay, Taobao, Qoo10 and few local retailers such as Zalora, ShopAbout, and Omigo. This market's higher intensity of competition compared to brick-and-mortar marketplaces is characterised by high market transparency, lower search costs, and low barrier to entry and expansion (*E-commerce in Singapore, 2015*).

The current problem in the market includes the lack of market transparency, the practice of price obfuscation and the restraints that interfere with free competition in a market. Restraints can happen between different retailers (horizontal restraints) and between manufacturers and retailers (vertical restraints).

- LACK OF MARKET TRANSPARENCY

Under a high level of competition, retailers may restrict information about the quality of products in order to compete on prices. Imperfect information prevents consumers from inspecting the good before making purchases. Consumers rely solely on brand reputation, reviews, pictures and product descriptions displayed by online retailers in making decisions. Online retailers may use low-quality products in order to stand out on price comparison websites and attract consumers to their stores.



A counterfeit good with similar design

CCCS can use stricter regulation of price comparison websites, such as but not limited to:

- Disallowing misleading illustrations and descriptions that may cause consumers to mistake low-quality products as branded products.

- Conducting regular sampling checks on price comparison websites to investigate whether the items exhibited for price comparison are homogenous
- Investigating e-commerce marketplaces that submit abnormally low prices to price comparison websites.

- **PRICE OBFUSCATION**

Competitors competing fiercely on prices may adopt price obfuscation to prevent consumers from easily understanding the final price and comparing the prices. The firm may choose to increase the number of screens that a consumer must click through before reaching the final price. Other practices include omitting shipping costs, taxes and service charges in the advertisements or price comparison websites.

The practice of price obfuscation is damaging to consumers, as the lack of price transparency makes it difficult for consumers to accurately choose the retailer that offers the lowest price. Search costs are endogenized by allowing obfuscation which is almost unobservable to increase the time needed to learn their price.² Stahl (1989) suggests that with the positive searching cost each time they pay to obtain a price quote, customers will only search once. His model suggests the collective incentive for all the firms to collusively increase search costs since information transparency decreases which lessen price competition within the market.

² Diamond (1971) and many subsequent articles connect search costs and equilibrium price levels. Ellison (2005) shows that the joint adoption of add-on pricing strategies can increase prices in a competitive price discrimination model.

Items For **dell xps 13 Notebook...** ALL (10,691) Domestic (1,729) Japan (143) Korea (1,156) China (5,405) Malaysia (8) USA (2,237) others (13) [+ Refine Results](#)

Accuracy Price 0 50 100 MAX GO Shipping from ALL

Item	Price	Shipping	Rating
 Dell XPS 13 Notebook 9360-72082SG (Intel i5 8GB RAM 256 SSD)1 YEAR WARRANTY \$1,998.00 \$1,999.00			

First page after searching for a product

Shopping List * Items placed in shopping cart will be retained for up to 30 days [My Coupon Box](#)

all	Item	Benefit	Qty.	Price/Option	Discount	Subtotal
Firdouse Elect... POWER ★★★★★ Question Total Price : \$1,998.00 Item Discount : \$0.00 Shop Coupon : \$0.00 Shop Coupon Shipping rate : \$7.80 Total : \$2,005.80						
<input checked="" type="checkbox"/>	 [DELL] Dell XPS 13 Notebook 9360-75015SG (Intel i7 16 GB RAM 512 SSD)	Recently Added Item	1	\$1,998.00 \$0.00		\$1,998.00

Anytime, anywhere, enjoy your shopping
Special shopping benefits that you can meet at Qoo10 Mobile.

[Use Mobile App>>](#)

Item Price(1)	\$1,998.00
Shop/Cart Coupon(0) Use My Coupons	\$0.00
Shipping rate	\$7.80
\$2,005.80	

Final price (only seen after clicking into the page)

To tackle this problem, CCCS may publish guidelines to stipulate that retailers must present the final price³ of their products in any of their advertisements. Guidelines on the maximum time or screens taken to reach the final price to avoid price obfuscation can also be imposed.

³ Including all the add-on prices, shipping fees, service charges, GST, etc.

BEST PRICE GUARANTEE

Best price guarantee as a form of price-matching strategy happens when a retailer promises to refund the price difference once a lower price of the same product can be found on other websites. Although these guarantees seemingly promote vigorous competition, the 'meet-the-competition' clause can facilitate collusion:

If both retailers cooperate and keep prices high, each makes \$10 million.

If both compete and lower prices, each make \$5 million in profit.

If A lower prices and B doesn't, A makes \$13 million in profit and B makes \$2 million, vice versa.

The Match strategy entails setting a high price but promising to match any lower advertised price by a competitor.

		Retailer B		
		Low	High	Match
Retailer A	Low	5, 5	13, 2	5, 5
	High	2, 13	10, 10	10, 10
	Match	5, 5	10, 10	10, 10

Adopting high price is weakly dominated by matching the price for both players, the best response analysis shows that Nash equilibrium is reached at (Match, Match).

Furthermore, best price guarantee allows price discrimination by separating uninformed consumers from the informed (Png and Hirschleifer, 1987). Consumers who are informed and search actively for lower prices after purchasing can obtain the same deal via refunds while uninformed (or price insensitive) consumers will pay a higher price.

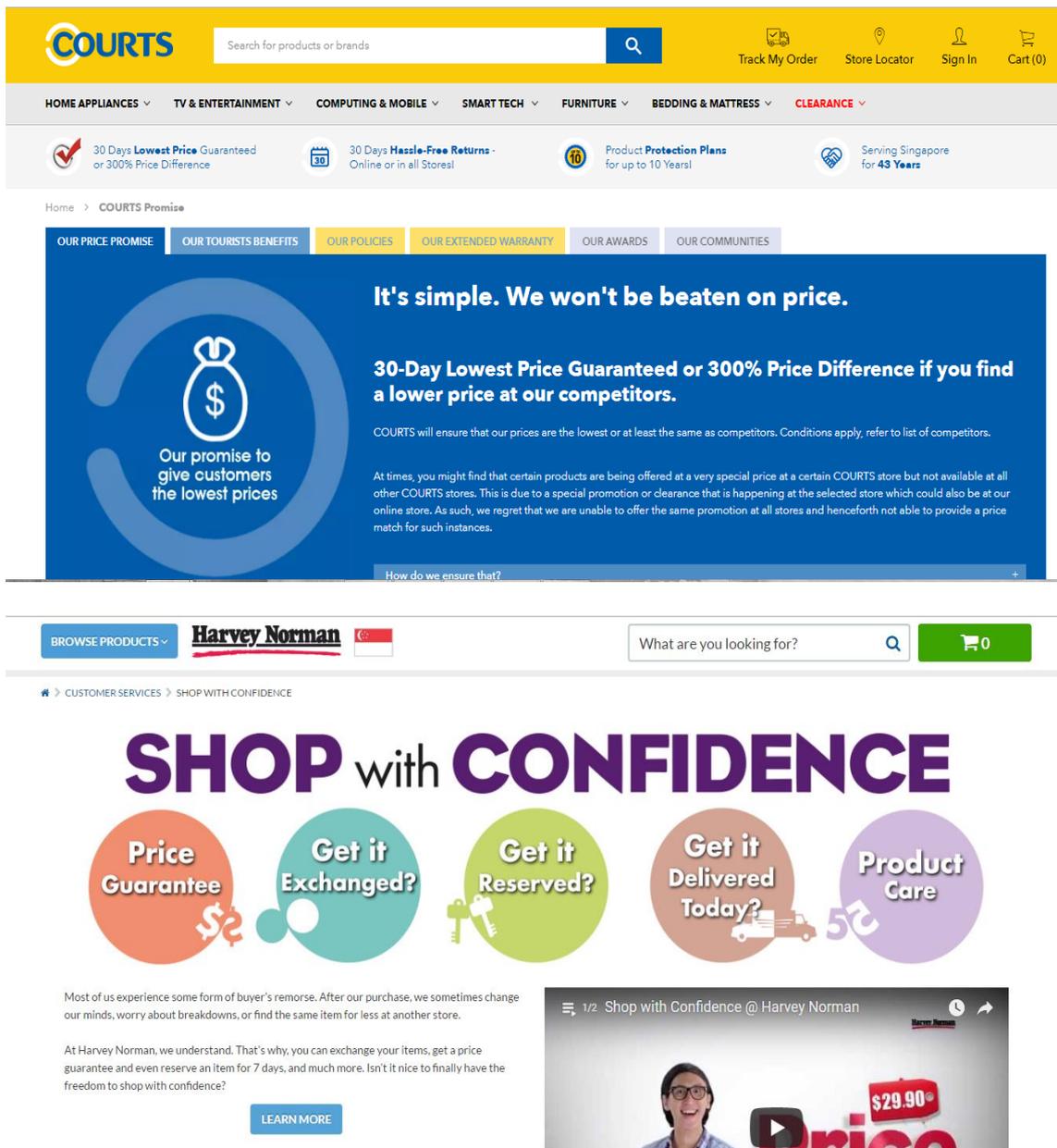


Figure 2: Screenshots from Courts and Harvey Norman

It is also notable that many software such as PriceZag and Exmart can facilitate instantaneous information gathering and automatic updating of prices according to rival retailers' price changes. Tacit collusion by price matching online using these 'robot-sellers' might not be easily captured by Singapore's legislation that require explicit agreements (either formal or informal) and intent. It is hard to be detected and concluded as a collusive behaviour.

The screenshot shows the Exmart website header with navigation links: Home, Web Data Services, Web Monitoring, About Us, Blog, and Contact Us. The main content area features a red heading "Stay Competitive With EXMART'S OPM" and a sub-headline: "The E-Commerce is a brutal scene with lots of players. If you are having trouble keeping online sales up, due to the lack of knowledge of your competitors products and prices, **We are here to help you!**". Below this are two service cards: "PINPOINT YOUR PRODUCTS" with an icon of a computer monitor and a target, and "AUTO NOTIFICATION" with an icon of a laptop and an envelope. A footer section titled "Repricing" includes an owl icon and text: "Adjust your price automatically as you snore based on your competitors and your cost. Set your own rules, e.g. Always stay 1% below the cheapest competitor currently in stock while maintaining a 10% minimum margin and ending the price with a psychological 9 - **See all options**".

Figure 3: screenshots from Exmart and PriceZag

CCCS may consider abolishing the practice of price-matching and best price guarantee on the basis that it is anti-competitive and damaging for consumer welfare. It can also publish guidelines that make it compulsory for retailers to present the trend of the historical prices of their products to avoid fake discounts and track whether price matching has really taken place.



Figure 4: Screenshot from Keepa, an Amazon price tracker

VERTICAL RESTRAINTS

RESALE PRICE MAINTENANCE (RPM)

RPM refers to the practice whereby a manufacturer and its retailers agree that the retailers will sell the product at certain prices, or within a certain price range.

RPM reduces price competition as the minimum or maximum price distorts market forces and disallows price mechanisms to function properly (Elzinga and Mills, 2008). The manufacturer provides retailers with attractive profit margins on sales of its own brand using the minimum retail price in exchange for them not selling other competing brands.

However, RPM can protect consumers. In some situations, manufacturers prefer to maintain a high-value or low-cost orientation. They may set a maximum resale price to prevent retailers from overpricing. The use of RPM here effectively limits the final price of the product, which is to the benefits of the consumers.

SELECTIVE DISTRIBUTION SYSTEMS (SDS)

SDS is a system whereby a manufacturer enters into agreements with a limited number of selected retailers (Ec.europa.eu, 2018). The economic concern is to protect the brand image by only allowing authorised online retailers that are able to offer pleasant shopping experience to sell the manufacturers' goods. SDS limits the number of authorised retailers and allows them to obtain goods at a lower ex-factory price compared to unauthorised retailers. This gives authorised retailers greater monopoly power to set prices, which reduces price competition among the retailers selling products from the same brand.

However, having a limited number of authorised retailers ensures the quality of service provided. As the authorised retailers are expected to follow standards or to maintain technically qualified staff, consumer welfare can be improved by the assurance of better service.

In UK and EU, RPM is strictly prohibited by competition laws. National Lighting Company (NLC) was fined £2.7 million for inputting a minimum price for retailers selling their products online.

Currently, vertical restraints enjoy block exemption from the section 34 prohibition on anti-competitive agreements. To tackle the problem of downstream collusion, CCCS may reconsider the block exemption of the vertical restraints. The legal consideration is whether the merits of the contract outweigh the competitive drawbacks. Instead of having all vertical agreements exempted, Singapore may learn from the EU Vertical Agreements Block Exemption guidelines which only exempts agreements that fulfill its requirements⁴.

Singapore may similarly blacklist some vertical agreements, for example:

- a. Prohibiting vertical agreements among manufacturers and retailers who already possess significant market power (eg. $\geq 30\%$) in order to prevent them from gaining monopoly power.
- b. Prohibiting the practice of setting a fixed or minimum price for downstream retailers while allowing setting maximum prices. This protects price stability in the market but still allowing some freedom for to carry out price competition.
- c. Regulation on the minimum number of retailers a manufacturer has and requesting manufacturers to submit reasons for rejecting to

⁴ The market share of each of the parties to the agreement must not exceed 30% and there must be no blacklisted hardcore restrictions in the agreement.

cooperate with certain retailers selling similar products. (e.g. retailers offering smartphones of similar price levels).

CONCLUSION: DIRECTOR OF THE CHANGING AGE

Within CCCS, in order to strike a balance between protection of consumer rights and promoting greater competition, the requirement is always to define the consumer welfare clearly and predict whether too much competition may trigger anti-competitive behaviour. To protect the consumer rights, direct approaches such as laws and legislation may be adopted considering the degree of antitrust behaviour or in the cases of sale of counterfeit goods. In some circumstances, the agency can adopt more indirect approaches such as consumer vigilance education or setting up gateways to monitor market activities through consumer reports and reviews.

The agency needs to evaluate the effect of both pro-competition policies and consumer protection policies to see if there is any implication on the other area. It can then adjust which area to focus on according to priorities. Possible criteria for evaluating are suggested as below:

- Policies should be evaluated in terms of categorisation of goods. Goods of significant safety concern such as baby products, manufacturing accessories and food should be more heavily regulated to avoid severe safety problems. In this case, permits given to the retailers to sell these items should be revised to raise the barrier to entry. Although this may lower the level of competition in

the market by allowing fewer competitors, consumers can be better protected. For more ordinary composite goods, CCCS should consider leveling the playing field to allow more competition and avoid collusion to benefit consumers through lower prices and better quality.

- Policies should be evaluated in terms of short-term and long-term impacts. For instance, policies that restrict e-commerce marketplaces from collecting consumers' data may protect the consumers' privacy in the short run may cause firms to possess less information and less able to improve their service to benefit consumers in the long run. This can be alleviated by making it compulsory for online marketplaces to seek for consumers' permission to collect their data in the same way as how websites issue "cookie statement" that asks for the permission of using cookies to improve browsing experiences.

In addition, encouraging too much competition reduces the profit margin of the firms. As the firms have less ability to make supernormal profits or reap substantial internal economies of scale due to intense competition within the market, they have less ability to engage in research and development (R&D) to improve the quality of their service and products in the future. The government can offer firms R&D grants and groom e-commerce experts through education to encourage innovation and service upgrading. Tax holidays or tax rebates can also be provided to local companies which actively participate in innovation and R&D.

As CCCS has taken up the duty of consumer protection, it may develop a section that allows consumers to lodge complaints against the retailers directly to CCCS as

currently CASE requires consumers to register for membership and pay respective membership fees and admin fees once the case is being processed. That discourages consumers from appealing and provides disincentives for retailers from engaging in quality and service competition especially for retailers selling petty commodities. Allowing public appeal also improves transparency of administrative processes and regulates the discretionary power of officials.

Membership Fees

Membership Fees	
Types of membership	Amount (GST inclusive)
Life	\$428
Ordinary/Single	\$26.75 per annum
Associate (Family*)	\$32.10 per annum
Associate (Student**)	\$8.55 per annum

* Eligible to family members of a consumer who sign up as an Ordinary member first

** Students must be above 12 years of age

Administrative Charges

Administrative Charges	
Range of claims	Administrative fees (GST inclusive)
Below \$5000	\$10.70
\$5000 to \$10000	\$21.40
\$10001 to \$20000	\$53.50
Above \$20000 - every \$10000 or part thereof	\$53.50

Figure 5: Screenshot from CASE's website

Finally, in cases where market failure or competition issues occur due to information asymmetries, the better solution might be to improve the consumers' awareness to

avoid frauds or deceiving marketing strategies rather than levelling the playing field for the retailers.

(2495 words)

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