

SUMMARY OF FEEDBACK RECEIVED ON THE GUIDELINES ON PRICE TRANSPARENCY

7 September 2020

Introduction

1. From 30 September 2019 to 21 October 2019, the Competition and Consumer Commission of Singapore (“CCCS”) conducted a public consultation on the publication of the Guidelines on Price Transparency (“Guidelines”). A total of 26 submissions were received, including from members of the public, e-commerce platforms, travel industry players and trade associations. Organisations/Companies which contributed feedback include Agoda Company Pte. Ltd., Asia Internet Coalition, Booking.com, Canon Singapore Pte. Ltd., DBS Bank Ltd., GlaxoSmithKline Pte. Ltd., International Bar Association, Jetstar Airways Pty. Ltd. and Swissotel Merchant Court, Singapore.
2. We are grateful to all contributors for their comments, most of which are supportive of the Guidelines. CCCS has reviewed the submissions carefully based on our interpretation of the Consumer Protection (Fair Trading) Act (“CPFTA”) before finalising the Guidelines on Price Transparency, which will come into effect on 1 November 2020.
3. CCCS would like to highlight that the CPFTA is in force and applies to all suppliers who engage in consumer transactions in Singapore, both online and offline. CCCS has and will continue to take action against egregious suppliers, which persistently infringe the CPFTA by engaging in unfair trading practices.
4. Under section 4 of the CPFTA, it is an unfair practice for a supplier, in relation to a consumer transaction –
 - (i) to do or say anything, to omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
 - (ii) to make a false claim;
 - (iii) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his/her own interests or is not reasonably able to understand the transaction or any matter related to it.
5. Suppliers should also note that there are 27 specific unfair practices listed in the Second Schedule to the CPFTA, and some unfair practices relate specifically to price transparency.

6. The Guidelines do not set a limit on the investigation and enforcement actions of CCCS. In enforcing the CPFTA, CCCS will take into account the reasonableness of the actions of the supplier in the circumstances.

Feedback on Overall Clarity

7. The Asia Internet Coalition and Booking.com respectively queried on:
 - (i) whether the Guidelines apply to all suppliers, be it online suppliers or physical stores; and
 - (ii) whether there are specific types of price displays/advertisements that will comply with the Guidelines.
8. CCCS noted that some examples used in the Guidelines referred to either online or offline transactions, when they could have been applicable to both. CCCS wishes to highlight that the Guidelines will apply to “all suppliers”, i.e. both online suppliers and physical stores, and has made the relevant amendments to the Guidelines to clarify this.
9. CCCS would also like to reiterate that the intention of the Guidelines as set out in paragraph 1.5 is to " indicate the manner in which CCCS would interpret the CPFTA in relation to the display/advertisement of prices and pricing practices... (and) indicate some factors and circumstances that CCCS may consider for each case when assessing whether displayed/advertised prices and pricing practices are potentially misleading”. Given that each industry is unique, the Guidelines provide broad principles and examples for illustration. This allows suppliers flexibility to design their advertisements or displays, while complying with the CPFTA.

Feedback on Drip Pricing

10. Comments from members of the public showed strong support for the Guidelines on drip pricing, namely, that suppliers should include fees, surcharges, Goods and Services Tax (“GST”) and any other taxes or service charges in the total headline price presented to consumers. There was also a suggestion to ban drip pricing altogether.
11. On the other hand, there were comments which indicated that:
 - (i) the definition of drip pricing in the Guidelines had failed to distinguish between mandatory fees and optional fees which are charged when consumers choose to add optional extras onto their booking (from Asia Internet Coalition);
 - (ii) suppliers should be allowed to display prices that exclude unavoidable fees which are to be paid upon check-in or check-out (from Agoda Company Pte. Ltd.);
 - (iii) disclosure of additional charges and fees on a separate page does not cause consumer detriment (from Asia Internet Coalition); and

- (iv) CCCS should provide clarification on what is considered “reasonably calculable” as the government may change existing taxes or impose new taxes on short notice (from Asia Internet Coalition).
12. In relation to (i), CCCS would like to highlight that suppliers who reveal mandatory fees along the transaction process are considered to have engaged in drip pricing. This is similar to the position taken in other jurisdictions such as Australia, the European Union (“EU”), United Kingdom (“UK”) and the United States (“US”). For suppliers who have pre-selected optional extras for consumers, unless the headline price already reflects the charges for the pre-selected optional extras, they are considered to have engaged in drip pricing. However, suppliers would not be deemed to have engaged in drip pricing if optional extras were not pre-selected and consumers chose these optional extras on their own accord.
13. In relation to (ii) and (iii) above, revealing additional mandatory charges and optional fees from pre-ticked options along the transaction process will make price comparisons difficult. To increase price transparency, CCCS strongly encourages suppliers to ensure that any unavoidable or mandatory fees/charges (e.g. taxes, surcharges, service fees) are included in the total headline price. Where any mandatory fees/charges cannot be reasonably calculated in advance, suppliers should disclose the existence of such fees/charges in a clear and prominent manner together with the headline price (as stated in paragraph 3.1.3 of the Guidelines).
14. In addition, as stated in paragraph 3.1.4, the GST Act¹ mandates GST-registered businesses (except businesses in the hotel, and food and beverage industries) to display prices that include the GST. The GST-inclusive price must be displayed at least as prominently as the GST-exclusive price.
15. For (iv), for mandatory taxes/fees, if suppliers are already charging them at the point of transaction, it means that these taxes/fees can already be calculated; where suppliers do not charge these taxes/fees at the point of transaction, disclosures informing consumers of such taxes/fees should be made in a clear and prominent manner together with the headline price.

Feedback on Pre-Ticked Boxes

16. There was feedback relating to:
- (i) disagreement with CCCS’s position that the failure to include pre-selected items in the overall price amounts to a false or misleading representation in every instance from Jetstar Airways Pty. Ltd.; and

¹ The GST Act is administered by the Inland Revenue Authority of Singapore (“IRAS”).

- (ii) clarification on whether the guidance on the *Supply of Unsolicited Goods or Services* would apply if pre-ticked boxes are used to provide the good or service for free from GlaxoSmithKline Pte. Ltd.
17. CCCS's position is set out in paragraph 3.1.6 which focuses on the use of pre-ticked boxes and emphasises that the cost of pre-ticked optional extras should be added to the headline price.
- paragraph 3.1.6 – If pre-ticked boxes are used, suppliers must provide disclosures of the goods or services offered, their corresponding prices and material terms and conditions. For instance, “opt-out”, cancellation and refund options, as well as any subsequent one-off or recurring charges, must be disclosed in a clear and prominent manner together with the pre-ticked boxes. The cost of pre-ticked optional add-ons should be included in the headline price listed/displayed. Suppliers should ensure that pre-ticked boxes are noticeable and prominent through appropriate design, layout and font size. Disclosures should be written in a manner that is easy for the intended audience to understand.
18. The omission of a material fact such as the price of pre-selected items from the overall headline price is misleading for consumers who had relied on the overall headline price. As consumers are likely to miss unchecking pre-ticked boxes, the price of these pre-selected items will likely be added to the total price. As suppliers know or ought reasonably to know that the total price will be increased due to the addition of the price of pre-selected items, and this will affect the decision of a consumer to enter into a transaction, the price of pre-selected items is a “material fact”. This is similar to the position of other jurisdictions.
19. CCCS wishes to highlight that the use of the term “free” has been covered in section 3.4 of the Guidelines. Suppliers who intend to provide unsolicited goods or services to consumers for free should refer to section 3.4, which provides greater clarity on the use of the term “free”, when marketing goods or services.
20. In addition, suppliers should be aware that regulation 3(1) of the Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations specifically provides that in the absence of the consumer's written agreement to pay for the unsolicited goods or services, the consumer may regard the unsolicited good or service as an unconditional gift from the supplier.

Feedback on Distracting Factors

21. The Asia Internet Coalition sought clarification on what are considered “distracting factors” in relation to pre-ticked boxes.

22. CCCS would like to clarify that suppliers should refrain from using elements such as pop-ups or flashing banners that would conceal pre-ticked boxes or make them less noticeable or prominent or that compete for consumers' attention.
23. Further information is provided in paragraph 3.1.12 of the Guidelines:
 - paragraph 3.1.12 – The use of design elements such as pop-ups and flashing banners that conceal, reduce prominence and compete for attention with pre-ticked boxes divert the consumers' attention and increase the likelihood that consumers would miss the material information.

Feedback on Hidden Charges: Cross-Border and Dynamic Currency Conversion

24. There was feedback from members of the public that they had been charged more than what was quoted and represented to them when they made online travel bookings. Some indicated that the affected consumers had only found out through the banks that these additional charges were applicable due to cross-border or dynamic currency conversion fees. On this note, Booking.com enquired on what is required to be displayed/disclosed in relation to currency conversion.
25. CCCS does not prescribe how suppliers should word their disclosures. However, suppliers should ensure that their disclosures are clear, prominent, accurate and written in a manner that is easy for the intended audience to understand. CCCS's position on disclosures can be found in the following paragraphs of the Guidelines:
 - paragraph 3.1.3 – Suppliers should ensure that any unavoidable or mandatory fees/charges (e.g. taxes, surcharges, service fees) are included in the total headline price. Where any mandatory fees/charges cannot be reasonably calculated in advance, suppliers should disclose the existence of such fees/charges in a clear and prominent manner together with the headline price. The disclosure should also include any subsequent fees that a supplier or any third parties may impose on a consumer; and
 - paragraph 3.1.5 – When prices are displayed to consumers in Singapore dollars but payments are processed outside Singapore, suppliers should clearly and prominently disclose that the transaction is a cross-border one that may involve unavoidable additional fees associated with currency conversions or cross-border payments that may only be disclosed to the consumer when he receives his bill. Where any of these charges are imposed directly by the supplier, and the supplier is aware of the amount payable, these additional fees and charges should be stated clearly and prominently, before a consumer enters into the transaction.

Feedback on Hidden Charges: Tour Packages and Optional/Additional Tours

26. There was feedback from members of the public indicating that when purchasing tour packages, tour agencies have failed to include mandatory components in the total price. The tour agencies have misrepresented mandatory components of the tour package as optional or additional, when it was not the case. As a result, consumers had to incur additional unexpected costs that were only disclosed to them at the point of payment or after payment had already been made.
27. CCCS would like to reiterate that under the CPFTA, it is an unfair practice for a supplier, in relation to a consumer transaction to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled. Where the purchase of a complementary good or service is mandatory in order for the consumer to utilise the primary good or service, suppliers should not falsely represent the complementary good or service as optional. This mandatory component should be presented in a clear and prominent manner, and its unavoidable charges, included in the total headline price. This position is set out in paragraph 3.1.3 of the Guidelines.

Feedback on Dynamic and Personalised Pricing

28. There were members of the public who commented that they had noticed a price increase in the airfare after logging into their frequent flyer account and where suppliers have engaged in dynamic pricing² and/or personalised pricing, and a suggestion that suppliers should disclose whether they engage in such pricing strategies/tactics.
29. CCCS would like to highlight that suppliers should ensure that they do not make false or misleading representations in respect of their dynamic and personalised pricing strategies/tactics. CCCS will monitor the developments in this area.

Feedback on Hyperlinks

30. There were comments received from the Asia Internet Coalition and Canon Singapore Pte. Ltd. on the use and placement of hyperlinks to disclose information.
31. CCCS wishes to highlight that the Guidelines do not prohibit the use of hyperlinks. In paragraph 3.1.16 of the Guidelines, CCCS stated that in most cases, the use of hyperlinks for disclosure of (additional) material information/terms and conditions is unlikely to be sufficient. Where a supplier chooses to use hyperlinks, the onus is on the supplier to show that its use sufficiently discloses material information, and terms and conditions. Suppliers may refer to paragraph 3.1.16, part D, of the Guidelines for guidance when using hyperlinks.

² Dynamic pricing refers to a pricing strategy where a supplier sets his/her prices based on current market demand and supply. Examples include surge pricing.

32. CCCS has also clarified in the Guidelines that the hyperlink should be placed in an appropriate position in relation to the relevant pre-ticked box(es) so as to be noticeable to consumers. The onus is on the supplier to show that this placement and its design would ensure that the hyperlink is noticeable to consumers.

Feedback on Final Itemised Price Listing

33. The Asia Internet Coalition expressed concerns over the necessity of an itemised price listing, where there are no optional fees included and all mandatory charges are included in the headline price, and no optional add-ons are pre-ticked or selected. They also provided feedback that it may be necessary for a consumer to be redirected to the start page or previous stages of the transaction if items were deselected or removed as the price would need to be recalculated or availability may change.
34. CCCS would like to highlight that as paragraph 3.1.17 states, the final itemised price listing should be provided to consumers before payment. Doing so is mutually beneficial for consumers and suppliers alike, as consumers are less likely to dispute when there is a process in place for them to verify the items in their shopping cart. Giving consumers the opportunity to remove items, especially pre-selected options, at this stage without being directed back to the start or previous stages of the transaction will also reduce the time and effort required on the consumers' part.

Feedback on Cancellations and Refunds

35. A member of the public provided feedback that some suppliers do not state their cancellation and refund policies clearly.
36. In general, suppliers should state their cancellation and refund policies clearly. CCCS would like to highlight that if pre-ticked boxes are used, besides providing disclosure of the pre-selected goods or services offered and their corresponding prices, suppliers must also provide disclosure of material terms and conditions of the pre-selected goods or services, such as those relating to "opt-out", cancellation and refund options, as well as any subsequent one-off or recurring charges together with the pre-ticked boxes.
37. CCCS would also like to highlight that when suppliers represent that a service is "free" for a certain period and chargeable after the free trial period has ended, it is a good practice for suppliers to notify consumers before the end of the free trial period and provide clear information on the cancellation process.

Feedback on Price Comparison

38. There was feedback from Canon Singapore Pte. Ltd. seeking clarification on whether the Guidelines also apply to simulated price comparisons, which may be based on certain assumptions and may not necessarily refer to any specific competing brands.

39. GlaxoSmithKline Pte. Ltd. and Agoda Company Pte. Ltd. enquired on the extent of research required before making a comparison with competitors' prices and also, on determining the products to be used for price comparison.
40. GlaxoSmithKline Pte. Ltd. queried if providing a refund would mean less research is required.
41. Guidance on making comparisons can be found in section 3.2, part D, of the Guidelines. If price comparisons are simulated, suppliers should be able to justify why the simulated price comparisons are not false or misleading.
42. Paragraph 3.2.7 states that "by keeping records and capturing evidence (where possible) to indicate that prices have been compared on a fair basis and that due diligence has been done, suppliers would be able to prove that the representation (of price advantage) is not false or misleading". The onus is on the suppliers to prove that they have done an adequate and reasonable amount of research in ensuring accuracy and truthfulness in their representation, and where comparisons were made, that they have been compared against goods or services that were/are accepted to be similar or equivalent by consumers or trade norms.
43. Offering to provide refunds where a price representation is made does not absolve the suppliers from the need to conduct research and ensure that such price representations are not false or misleading. Should suppliers make false or misleading price representations or claims about the provision of refunds, they may be in breach of the CPFTA.

Feedback on Discounts and Promotions

44. There was feedback on:
 - (i) a lack of clarity on the limitations when suppliers issue discount codes and offers (provided by a member of the public);
 - (ii) the use of disclaimers (e.g. "while stocks last" and "limited stocks only") (provided by Canon Singapore Pte. Ltd.);
 - (iii) legitimate reasons for extension of promotions (provided by Agoda Company Pte. Ltd., Asia Internet Coalition, Booking.com, Canon Singapore Pte. Ltd. and GlaxoSmithKline Pte. Ltd.);
 - (iv) the applicability of the Guidelines to dynamic pricing models, online travel agents ("OTAs") and aggregators (provided by Agoda Company Pte. Ltd., Asia Internet Coalition, Booking.com, DBS Bank Ltd., GlaxoSmithKline Pte. Ltd. and Swissotel Merchant Court, Singapore); and
 - (v) seeking clarification on what CCCS would recognise as a reasonable period for a previous price (provided by Agoda Company Pte. Ltd.).

Clarity on Limitations and Qualifiers

45. CCCS would like to highlight to suppliers that when offering a price benefit through the many different media available, suppliers should make known any qualifying terms in a clear and prominent manner together with the price benefit, and should not mislead consumers about a potential price benefit. For clarity on CCCS's position, suppliers may refer to paragraph 3.3.11 of the Guidelines.

Use of Disclaimers

46. Suppliers should provide clear and as far as possible, accurate indications to consumers on the availability of goods. Disclaimers and representations as to the quantity of stock available should not be false or misleading to consumers.

Legitimate Reasons for Extending Promotions

47. CCCS would like to highlight that if suppliers choose to extend a promotion, the onus is on the suppliers to prove that the original promotional period advertised was not meant to mislead consumers and they should be able to substantiate the need for an extension with evidence. For guidance on discounts, suppliers may refer to section 3.3, part D, of the Guidelines.

Applicability of Guidelines to Dynamic Pricing Models, OTAs and Aggregators

48. Suppliers should ensure that they do not make false or misleading representations in respect of their dynamic and personalised pricing strategies/tactics.
49. CCCS's view is that OTAs are "suppliers" within the meaning of the CPFTA. This is because OTAs provide consumers with services, which include booking and payment facilities on their online platforms to allow consumers to procure travel-related services directly.
50. Aggregators that receive money or consideration as a result of providing information and comparison services to consumers are also "suppliers" within the meaning of the CPFTA. For aggregators that only aggregate information and present them to consumers, they may still be considered "suppliers" within the meaning of the CPFTA. This is because aggregators provide information and comparison services (e.g. an aggregator's search engine filter to sort search results by prices) to consumers which facilitate consumers' decision-making.
51. In addition, aggregators have responsibilities under section 10 of the CPFTA to not knowingly abet, aid, permit, or procure a supplier to engage in an unfair practice.
52. However, as infringements are facts-specific, in determining whether a supplier has engaged in an unfair practice, CCCS will consider the reasonableness of the supplier's

conduct bearing in consideration the prevailing circumstances at the relevant time under section 5 of the CPFTA.

53. The actions taken by the OTA/aggregator to validate the information it displayed and the reasonableness of such action will be amongst the factors to be taken into consideration.

Reasonable Period for a Previous Price

54. CCCS will consider the context of the market and nature of the business in its assessment of a reasonable period or regular basis for a previous usual price. As each case is unique, factors including the reasonableness of the supplier's conduct will also be considered.

Feedback on the Use of the Term "Free"

55. There was feedback from Asia Internet Coalition and Canon Singapore Pte. Ltd. seeking clarification on when suppliers may use the term "free" in product bundling, where the supplier may or may not have factored the cost of the item into the pricing, and clarification on the meaning of paragraph 3.4.8.
56. CCCS would like to reiterate that under paragraph 3.4.3 of the Guidelines, "suppliers using the term, "free", could mislead consumers and potentially infringe the CPFTA, should suppliers seek compensation, whether partial or in full, or in other ways to recover the cost".
57. CCCS has amended paragraph 3.4.8 as follows:
 - paragraph 3.4.8 – Suppliers must not represent a product/service as "free" if a consumer who does not enter into an agreement with a supplier or makes a separate purchase, is charged subsequently for the "free" product/service. For example, if a product/service is represented to a consumer as "free" without any conditions stated upfront, the consumer should not be subsequently charged for consuming it, even if the consumer refuses to make any purchase. The onus is on the suppliers to prove that they have stated any relevant conditions and qualifiers in a clear and prominent manner together with the "free" representation, and before a consumer accepts the "free" product/service.
58. Suppliers could refer to paragraphs 3.4.3 to 3.4.8 of the Guidelines for clarity on when a supplier would be deemed to have sought compensation for the "free" item.

Feedback on Competition Issues

59. There was feedback from the International Bar Association that CCCS should:

- (i) implement safeguards in order to avoid creating a bias towards consumer welfare in its competition enforcement, at the expense of total welfare³;
- (ii) identify potential areas or cases where consumer protection and competition policy diverge;
- (iii) set in place mechanisms for cooperation between CCCS's Consumer Protection Division, Legal Division and Enforcement Division when dealing with such matters; and
- (iv) explore consumer-facing remedies, where appropriate, for competition enforcement.

Consumer Welfare and Total Welfare

60. As CCCS has both consumer protection and competition enforcement functions, it will consider the interests of both suppliers and consumers in the market in its decisions.
61. In its competition enforcement policy, CCCS has a policy of taking a total welfare approach, taking into consideration the interests of all market stakeholders, including consumers. This is to ensure efficient functioning of markets in Singapore as a small and open economy. In this regard, CCCS considers both its competition and consumer protection functions to be consistent with the total welfare approach. It may be worth noting that in general, anticompetitive activities and unfair trade practices cause harm on both total welfare and consumer welfare. For example, when suppliers agree to fix prices amongst themselves, this harms both consumer welfare and total welfare.
62. In addition, the enforcement of the CPFTA against false and misleading conduct does not only protect consumer welfare, but also contributes to total welfare. False and misleading conduct, if not curbed, would lead to information asymmetry between suppliers and consumers, such that adverse selection would occur, leading to 'good' sellers being competitively disadvantaged compared to 'bad' ones, which would in turn lead to a decrease in total welfare (deadweight loss). For example, false claims made by a 'bad' seller that misinform consumers and lead them to choose the 'bad' seller's products over those of other 'good' sellers, can lead to the 'good' sellers being competitively disadvantaged. Therefore, enforcement of the CPFTA is also consistent with the total welfare approach.

Consumer Protection and Competition Policy

63. Competition policy and consumer protection are generally complementary. The example of price transparency illustrates the need to consider such issues in their context. Price transparency may be a competition concern where it facilitates collusion, such as in the case of competitors sharing future price information. However, where it

³ In economics, total welfare refers to the sum of the consumer welfare and producer welfare. Consumer welfare is the difference between what consumers would have been willing to pay for a good and what they actually had to pay. This difference is the surplus that consumers get from buying a good. Producer welfare refers to the producers' profits.

enables consumers to be better informed and facilitates their comparison of different offers that are publicly available in the market, there would be little or no impact on the ability of competing businesses to monitor one another's prices or otherwise collude. Such form of price transparency could be expected to result in gains to both consumer welfare and total welfare.

Institutional Design of CCCS

64. CCCS currently already draws on the expertise and resources across the organisation in integrating the assessment and decisions on both competition and consumer protection cases. The Online Travel Booking market study is an example of a cross-divisional project within CCCS.

Consumer-Facing Remedies

65. CCCS has considered and proposed consumer-facing remedies as part of its competition enforcement, particularly in its market inquiries. Where relevant, CCCS has worked with the relevant government agencies to implement these remedies. For example, in the formula milk market inquiry in 2017⁴, CCCS proposed educating consumers on the nutritional content and requirements of formula milk to improve consumer awareness of the availability of a variety of formula milk products at different price points. This will allow consumers to make an informed decision rather than relying on perceptions such as “more expensive means better quality”. CCCS will continue to explore consumer-facing remedies where appropriate.

⁴ For more information, visit www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/formula-milk-market-inquiry-findings.