

21 October 2019

Competition and Consumer Commission of Singapore (CCCS)
45 Maxwell Road, #09-01, The URA Centre, Singapore 069118

Attention: Ms. Davina Wong, Senior Assistant Director (Consumer Protection)

Subject: Industry Submission on the Competition and Consumer Commission of Singapore (“CCCS”) guidelines on the Price Transparency

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to the **Competition and Consumer Commission of Singapore (“CCCS”)** for the opportunity to submit comments on the **Consultation Paper on Proposed guidelines on the Price Transparency (“Draft Guidelines”)**. AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues. Our current members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, LinkedIn, LINE, Rakuten, Twitter and Verizon, and Booking.com.

We welcome the CCCS’ intention to publish guidelines on price transparency, providing guidance on recommended practice across all industries and to the benefit of Singaporean consumers regardless of who they are transacting with. As a consumer facing business, we take our consumer law compliance obligations very seriously. We believe that greater clarity in the guidelines will enable more certainty for businesses in complying with the Consumer Protection (Fair Trading) Act (“CPFTA”) and will help to protect a level playing field between traders by encouraging a fair, consistent and competitive process under which traders can innovate and compete with one another.

As responsible stakeholders to shape the policy making process in Singapore, we appreciate the ability to participate in this discussion and the opportunity to provide inputs. As such, please find appended to this letter detailed comments and recommendations (**Section wise**), which we would like to respectfully request CCCS to consider, which could be a useful feedback for the policy-making process to determine an effective approach to price transparency in Singapore.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Importantly, we also look forward to offering our inputs and insights, directly through meetings and discussions with CCCS and help shape an effective and competitive regulatory framework in Singapore.

Sincerely,

A handwritten signature in blue ink that reads "Paine".

Jeff Paine
Managing Director,
Asia Internet Coalition, <https://aicasia.org>

DETAILED COMMENTS AND RECOMMENDATIONS

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We provide the following feedback in relation to the key issues identified in the draft pricing guidelines:

SECTION 1: INTRODUCTION

At the outset, the draft guidelines should clearly state that they apply to all suppliers and advertisers (e.g. metasearch engines) of consumer products and services (online and offline) that are made available in Singapore and across all industries. The draft guidelines only contain a single statement at the end of the “Effect of Misleading Pricing Practices on Consumers” section and fails to confirm the application of the guidelines clearly or prominently. The CCCS released the pricing guidelines concurrently with the market study report into the online travel booking sector. This has further prevented a broader awareness that the guidelines apply to all suppliers and advertisers, regardless of whether they are in the travel industry or not.

We take the view that it is important for the guidelines to make clear, from the outset, that the practices identified by the CCCS are not necessarily misleading or unfair and, therefore, may not necessarily be in breach of the Consumer Protection (Fair Trading) Act (“CPFTA”). To avoid alarmist situations and an inundation of unreasonable complaints to CASE/the CCCS as well as to suppliers, it is important for the CCCS to highlight in the guidelines, from the outset and at appropriate junctures, that whether the practices identified are misleading or unfair (and in breach of the CPFTA) turn on the specific facts of the case and that there could be reasonable and justifiable reasons why suppliers use certain methods to display prices or advertise prices.

It is important for the guidelines to provide further clarity and consistency on their intended purpose – namely to provide guidance on how to comply with the CPFTA.

It should be recognized that the CPFTA does not prescribe how businesses should comply with their obligations and this can be dependent upon the circumstances. Allowing businesses the freedom to develop different pricing practices that meet the requirements of the CPFTA is important. It encourages innovation and competition in the market. Similarly, the guidelines should not be prescriptive. In particular, they should confirm that a departure from the guidelines should not necessarily mean that the pricing practice misleads consumers or is unfair.

We note that the guidelines contain “examples” that are “for illustration and are not exhaustive” (**Section 1.6**) but at the same time, include actions that suppliers should take “... to ensure that prices and their accompanying conditions are accurate and communicated clearly” (**Section 1.2**) and yet businesses are “strongly encouraged” (**Section 4.1**) to follow the CCCS’s “approach, positions and recommendations”. We would suggest that the guidelines are clear to the extent that they are guidelines only, and that the examples given are not exhaustive, rather than strongly recommending particular practices.

Section 1.2

The CCCS indicates “some factors” it may consider when assessing pricing practices, it would be beneficial to either confirm these are “key factors” or, if they are just “some factors” for the CCCS to identify what are the “key factors” (noting that the CCCS could decide otherwise in the specific circumstances). This would provide greater certainty and confidence for those who comply with the guidelines and importantly, avoid diluting the benefit of the guidelines by not addressing key factors.

SECTION 2: THE EFFECTS OF MISLEADING PRICING PRACTICES ON CONSUMERS

Section 2.2

We suggest rewording the reference to “Time-limited sales target consumers’ aversion to losses” to clarify its meaning. We assume the intended meaning is a fear of losing out on a promotion, discount or bargain.

We suggest clarifying the meaning of drip pricing. The statement that “Drip pricing is the conduct of adding mandatory or optional fees or charges along the transaction/payment process.” fails to provide guidance on what constitutes mandatory fees and fails to distinguish between mandatory fees and optional fees including the legitimate process where customers may choose to add optional extras onto their booking during the booking process. Please refer to more detailed comments below.

SECTION 3: ENSURING PRICE TRANSPARENCY

Drip pricing and pre-ticked boxes

Section 3.1.1

The definition of “drip pricing” set out in paragraph 3.1.1 is very broad and potentially could include situations in which additional fees or charges are displayed very early in the transaction process or at an early stage of a booking path. In such situations where additional fees and charges are not included in the headline prices (for various reasons, including for the purposes of displaying and comparing prices of goods sans variable charges) but where additional charges and fees are clearly disclosed very early in the transaction process or booking path (e.g., in a second “page” on a website), then arguably there is no consumer detriment and the method of display should not be viewed as misleading or unfair.

For platforms that facilitate transactions between suppliers and consumers, they will only be able to include mandatory charges and optional fees to the extent that these are provided by the relevant suppliers. The responsibility should fall on suppliers to provide accurate and up to date information.

We suggest rewording the definition of drip pricing to provide more clarity on:

a. mandatory fees.

In **Section 3.1.3**, we suggest that more clarity on mandatory fees should be provided. For example, in the travel sector “unavoidable or mandatory” fees could potentially include (a) government, local authority or city-imposed taxes and/or fees, (b) supplier imposed mandatory fees (eg. resort fees, cleaning fees, utilities usage fees), (c) property imposed optional fees for products or services that are not chargeable if the products or services are not used (eg. onsite car parking charges, breakfast, wifi fees) or (d) supplier imposed refundable fees (eg. refundable deposits) and (e) booking fees. Such charges could be imposed by governments, local authorities, supplier or platforms depending upon the circumstances.

We suggest that fees falling in (c) and (d) should not be treated as mandatory fees and should not be required to be included in the headline price provided that consumers are notified prior to completing their booking that such fees are payable and/or the circumstances when such fees would arise e.g. if the consumer made use of such optional products or services.

We suggest that the guidelines provide examples of what is considered “reasonably calculable” so there is certainty on this for businesses. It is also not uncommon for governments and local authorities to change existing taxes or impose new taxes on short notice.

For instance, in the travel industry, with some fees that are (potentially) mandatory, the fees may apply only to certain groups or exemptions may apply for certain groups (eg. for clergy or military, children under a certain age, fees per person) and this information may not be collected or need to be collected during booking. Guidance should be given to traders on how such fees should be treated in terms of price display to ensure a consistent treatment across businesses.

We propose to the CCCS that (i) it refers to “unfair drip pricing” and not simply “drip pricing” in its example; and (ii) it clarifies that where additional charges and fees are disclosed early in the transaction process or booking path for online bookings, such situations may not be considered unfair drip pricing.

b. optional fees.

The definition of drip pricing should distinguish between fees for optional add-ons that are pre-selected (which should be included in the headline price) and fees for optional add-ons that (a) a consumer actively selects before completing the booking (which should be included in the price after being selected) or (b) a consumer actively selects after completing the booking, eg. use of minibar during a hotel stay (which should not be included in the headline price). The latter (both (a) and (b)) also constitute “optional fees” but should not be considered “drip pricing”.

The draft guidelines state “Drip pricing can occur on some online platforms, such as some travel booking websites”. As mentioned in the comments above, there may be some confusion that the

pricing guidelines apply only to the online travel industry. Highlighting travel booking websites may reinforce this misconception, will potentially confuse suppliers and will only be to the detriment of consumers.

Cross border transactions

Section 3.1.5

The draft guidelines state suppliers should clearly disclose when payments will be processed outside Singapore at the point of billing.

For platforms that facilitate transactions between suppliers and consumers, it may not always be possible for the platform to be aware of the location where payments are processed as it may not be involved in what is a direct transaction between the supplier and the consumer.

It may be impractical to follow the guidance to notify consumers that their 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 at the time of billing” due to space constraints, especially on mobile websites or applications. It would also be confusing to consumers to provide that messaging in full and we would suggest that it should be sufficient to indicate that the transaction is cross-border or that payment may be charged in a different currency or that payment may not be processed in Singapore or that additional fees may be payable, or any combination of those statements but should not be required to display all of them.

We suggest the intended meaning of “point of billing” should be clarified. Does this refer to when payment is actually made, which could be at the time of making a booking or could be at a later date?

The **Sections (3.1.8/9)** contain an example that is applicable to online and offline advertisements and we suggest that referencing “online” specifically might suggest otherwise.

Fine print and pop ups

The **Section 3.1.10** appears applicable to online and offline transactions and we suggest referencing “physical stores” might suggest otherwise.

The **Section 3.1.11** may create an impression that use of fine print should only be observed for online suppliers. Use of fine print is equally applicable to offline materials eg. brochures, flyers etc. and this should be clarified.

Describing pop-ups and banners as “distracting factors” suggests that these should never be used. These features relate to the consumer experience and how they are used will determine whether they are potentially distracting or not. In our view, they can be helpful features to highlight important and useful information to consumers at the appropriate place (eg. placing pop-ups close to key information to convey additional information that is relevant) or appropriate time (eg. pop-ups that ensure that specific information is brought to the attention of the consumer). In some cases, avoiding pop-ups could result in displaying a vast amount of information to consumers requiring them to filter the information that is important and relevant, which would be confusing

and unhelpful. Further, the market provides a good arbiter of what is distracting for each consumer. Guidelines should not presuppose what this is. If a website includes too many pop-ups that are not helpful to a consumer but are rather distracting – that consumer will move on to the next website for its services.

The guidelines relating to distracting factors should form the basis of a separate section to fine print as these are different issues.

We further recommend CCCS to expressly acknowledge in its guidelines, that there are situations where pop-ups are necessary and will not be viewed as distracting factors. For example, pop-ups which highlight important terms and conditions to the consumer, pop-ups requiring important consents from the user, are not viewed as distracting factors.

Pre-ticked

In **Section 3.1.15(b)**, we suggest that it may be appropriate to use hyperlinks even where there are no space constraints. In circumstances where consumers are offered a number of optional add-ons, e.g. a consumer may select a hotel and subsequently wish to select a flight, car hire, activities or insurance, while technically there may not be space constraints to display all key terms and any additional material information/terms and conditions but doing so without using features such as hyperlinks is likely to result in the information being overwhelming and confusing to consumers. Use of hyperlinks should be considered appropriate to balance the need to provide full disclosure and to do so in a manner that clearly conveys the information to consumers.

We therefore suggest that this section with the changes outlined above should be clearly stated to provide guidance for both pre-ticked optional add-ons and optional add-ons selected by consumers before completing their transactions.

In **Section 3.1.15(b)(i)**, we accept that the placement of hyperlinks to the relevant information is important but we would suggest that it is equally important to place it in an appropriate place, taking into account the information being displayed fully and the information available via the hyperlink. Placing the hyperlink “as close as possible” is likely to lead to poor layout of the information to be conveyed to consumers and could create greater confusion.

Itemised price listing

For platforms that facilitate transactions between suppliers and consumers, they will only be able to provide a breakdown to the extent that these are provided by the relevant suppliers. The onus should therefore fall on suppliers to provide this information clearly and accurately to the platform.

Section 3.1.16

We suggest the guidelines should not make it mandatory to provide a breakdown of fees if there are no optional fees included. If all mandatory charges are included in the headline price and no optional add-ons are pre-ticked or selected by consumers, then the price will remain the same. It can be technically complex to provide a granular breakdown where the consumer is purchasing a combination of products and/or services for a headline price (with no optional fees) but a breakdown is required to be provided. We would be supportive of requiring a breakdown where optional fees for pre-ticked optional add-ons or selected optional add-ons are itemised, enabling

transparency for consumers and giving them an opportunity to identify and remove any optional add-ons they wish to deselect prior to completing the transaction.

We would highlight that in certain transactions, the selection of particular products or services could entitle the consumer to an additional discount. As the price would need to be recalculated or availability may change if any items were deselected or removed, it may be necessary to be redirected to the start or previous stage of the booking path. We would suggest that whilst it might be considered good practice to allow for deselection or removal of items without being redirected to the start or previous stage of the booking path, this would be purely for the consumer's convenience and does not have any bearing on compliance with the CPFTA, and could be technically complicated to implement in many industries.

We suggest that the intended meaning of "in the transaction process" be clarified. If a breakdown of fees is required, then a breakdown of fees 'prior to completion of the booking' would in our view be sufficient. The guidelines should confirm that there is no requirement to provide any breakdown of fees at other stages throughout the booking path.

Section 3.2: Price comparisons [with other suppliers]

Section 3.2.8

This section provides an example that three to six months could be a good indication of the regular selling price which creates an impression that any other periods would not be permitted.

Section 3.2.9

Section 3.2 deals only with price comparisons against a competitor's price. This section should not state "for example, a competitor's price" as it is the only example. We suggest replacing "referenced price, for example a competitor's price," with "competitor's referenced price".

Section 3.3: Discounts [against same supplier prices]

For platforms that facilitate transactions between suppliers and consumers, they will not be in a position to validate a supplier's pricing on other channels (including the supplier's own channels). To the extent that any price comparison is provided this would only be comparing prices provided by the suppliers.

Section 3.3.8

This section prohibits suppliers from making discount representations "if they do not in good faith expect to increase the price at a later date". We wish to highlight that platforms do not have oversight of prospective pricing plans of suppliers, and platforms rely on suppliers to provide pricing information of their products and/or services. As such, to the extent that a duration of sale is advertised by platforms, such discounts and duration is determined by obtaining such discounted pricing from the suppliers.

Section 3.3.9

This section suggests that it would not be possible in any circumstances to extend a promotion period. We suggest providing clarity by replacing “will still be available beyond the limited period” with “is intended to extend beyond the limited period” to clarify that promotion periods should be genuinely set in good faith but the specific circumstances may enable it to be extended without falling foul of CPFTA.

Section 3.4: Use of the term “free”

Section 3.4.3

We suggest rewording the section and clarifying the reference to “should they seek compensation”, is this a reference to consumers or suppliers seeking compensation? We wish to highlight that platforms rely on suppliers for information on whether free products and/or services provided to consumers are “free” and in many cases this information is uploaded by the suppliers and/or otherwise provided to the platform.

Section 3.4.6

We suggest rewording this section to clarify the intention. Is it intended to prohibit the use of the word “free” if a consumer is required to enter into an agreement with a supplier or make a purchase? The current drafting seems to suggest that a consumer who does not enter into an agreement with a supplier cannot be charged for what would otherwise be a “free” product/service.

We suggest clarifying that reasonable costs of collection and/or delivery would be acceptable and imposing such costs would not impact the use of the term “free”.

Section 3.4.9

We suggest it would be helpful to indicate that use of hyperlinks (following the criteria in 3.1.15(b) i, ii and iii) would also be acceptable.

SECTION 4: CONCLUSION

While we have already commented above on businesses being “strongly encouraged” to adopt the recommended actions and how this could cause uncertainty and confusion for suppliers looking to the guidelines for guidance on compliance. It would be helpful to have a statement that (whilst not a guarantee of compliance with CPFTA), the adoption of the guidelines would be a key factor that would be taken into account by the CCCS together with the specific circumstances if a supplier’s pricing practice is challenged.

In addition, the reference in footnotes to cases in other jurisdictions (which have been adopted or adapted as examples) seem unnecessary as the legislation in those countries differ and the guidelines can include examples without such references particularly as some of the details of those cases could be specific to another jurisdiction.

The proposed guidelines provide welcome direction of recommendations and details of potential factors suppliers should consider when complying with the CPFTA. However more clarity on (a) a number of points are requested to avoid creating unnecessary confusion for suppliers seeking to comply with the CPFTA and (b) the extent to which supplier can rely on the guidelines and/or have flexibility to comply with the CPFTA in another manner which they consider appropriate.

- **End**