

Insights

COMPETITION AND CONSUMER WATCHDOG IN SINGAPORE PUBLISHED GUIDELINES ON PRICE TRANSPARENCY

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SUMMARY

The Competition and Consumer Commission of Singapore published the Guidelines on Price Transparency (the “**Guidelines**”) on 7 September 2020. This Guidelines aim to provide greater clarity and guidance to businesses on the interpretation and effects of the Consumer Protection (Fair Trading) Act (Cap. 52A) (“**CPFTA**”) on various pricing practices. The Guidelines will come into force on 1 November 2020.

Background

The Competition and Consumer Commission of Singapore (“**CCCS**”) is the administrator of the Consumer Protection (Fair Trading) Act (Cap. 52A) (“**CPFTA**”), which aims to protect consumers against unfair trading practices in Singapore.

CCCS is authorised under CPFTA to apply for an injunction to restrain a supplier from engaging in unfair practice in breach of CPFTA. If the supplier continues with its unfair practice despite the injunction, (i) the supplier may be brought to court for contempt of court, and (ii) this would be a criminal offence which could result in a fine and/or imprisonment.

On 7 September 2020, CCCS published the Guidelines on Price Transparency (the “**Guidelines**”), which may be taken as the basis of how CCCS would interpret CPFTA in relation to the display and advertisement of prices by physical and online suppliers.

The Guidelines will become effective on 1 November 2020, meaning that businesses have less than two months to review whether they have any misleading pricing and advertising practices and, if they do, to clean up their errant acts in accordance with the Guidelines.

Gist of the Guidelines

In particular, the Guidelines cover four key pricing practices, namely (1) drip pricing, (2) price comparison, (3) discounts and (4) use of the term “free”. The use of these pricing practices by a supplier potentially may infringe CPFTA. The Guidelines also set out prudent actions that suppliers are recommended to take, so as to ensure that prices are accurately stated and clearly communicated.

(1) Drip pricing

“Drip pricing” means advertising or displaying a lower headline price for a product or service, but subsequently charging the consumers a higher final price with additional fees or charges which may be unavoidable, such as taxes, surcharges and service fees.

The Guidelines provide that a supplier should include all mandatory fees or charges in the aggregate headline prices. Where the amount of these mandatory fees or charges cannot be determined at the time of display, the supplier must disclose, clearly and prominently, the existence of such fees or charges, imposed by supplier or other third parties. In cross-border transactions, the supplier also must disclose any additional fees associated with currency conversion or overseas payments, which may be chargeable and made known to the consumers only when the final bill is received.

For optional add-ons, CCCS recommends the suppliers adopting an “opt-in” or “opt-neutral” approach (rather than pre-ticked box), under which consumers are required to indicate express consent by ticking the box as an active and express choice.

Any pre-ticked box should be displayed in a notifiable manner and in appropriate design, layout and font size. The supplier must disclose the optional goods or services offered, their corresponding price (which also should be included in the final total price) and material terms and conditions. Such disclosure via the use of hyperlinks is unlikely to be sufficient for the purposes of the Guidelines. However, where clear, prominent and upfront disclosure is not possible due to space constraints, hyperlinks reasonably may be used if: (i) the hyperlinks are placed appropriately in relation to the pre-ticked boxes and are notifiable to consumers; (ii) the labels of the hyperlinks convey the nature and relevance of the information to which they lead; and (iii) the same hyperlink style is used so that consumers are aware of the presence of the links.

Before processing the payment, the supplier should consider providing a final price breakdown of all mandatory and optional items, with appropriate “remove from shopping cart” functions.

(2) Price comparison

“Price comparison” refers to the practice of a price comparison with competitors to reflect a competitive price and/or a price advantage. Common expressions include “best price in Singapore” and “our price \$30, elsewhere \$50”.

A supplier should ensure that comparison made with other suppliers' prices are not false or misleading.

Before making a price comparison, the supplier is obliged to conduct its own market research on prices of equivalent products. The supplier is encouraged to retain records of such research, which establish that prices have been compared on a fair basis with due diligence. Further, the supplier is recommended regularly to check the referenced prices to avoid misrepresentation due to a change of competitors' prices.

An important note is that the supplier's research obligation on referenced prices would not be absolved by making an offer to refund if a lower rate of the same product or service is found elsewhere.

(3) Discounts

"Discounts" here mean the practice of price comparison of the existing reduced prices with original or previous price offered by the same supplier.

To reflect prices truthfully, the basis for price comparison should be a genuine past price which was offered actively and openly for a recently reasonable period in the ordinary course of business. The supplier is advised to keep evidence of pricing history. The time period during which the promotion price will be available should be stated accurately.

(4) Use of the term "free"

Suppliers often label certain products or services as "free", with an intention to entice consumers to try a product or experience a service, with a view ultimately of getting the consumers to pay for future orders of these products or services.

Any representation that the price of a product or service is "free" or "\$0" must not be false or misleading. Along with the "free" representation, the supplier should set out clearly any qualifiers, terms and conditions, and subsequent/ deferred charges.

For services which are free for a trial period only and therefore become chargeable, the supplier is advised to notify consumers before the expiry of the free trial period and provide sufficient information on the cancellation process.

Definition of unfair practice in CPFTA

The four pricing practices specifically mentioned in the Guidelines are not an exhaustive list of what falls within "unfair practice" under CPFTA.

In addition to these four specific unfair pricing strategies, suppliers are reminded that they also are prohibited from carrying out other "unfair practices" as defined under CPFTA:

- to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- to make a false claim;
- to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer (i) is not in a position to protect his own interests; or (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; and
- 27 specific unfair practices set out in the second schedule of CPFTA, among which seven of them relate specifically to price transparency covered by the Guidelines.

RELATED PRACTICE AREAS

- Consumer Fraud, RICO, & Unfair Business & Sales Practices

MEET THE TEAM



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