

November 1, 2019

## Executive Summary

In an age of intense market competition, businesses have resorted to various novel marketing and pricing practices to capture the attention of consumers. Many of these practices may potentially run afoul of the law and businesses are now put on notice that such practices are now being scrutinised and may be subject to enforcement action.

## CCCS: The New Consumer Sheriff in Town

On 1 April 2018, the Competition and Consumer Commission of Singapore (CCCS) assumed the role of the administrator and enforcer of the Consumer Protection (Fair Trading) Act (Cap. 52A)(CPFTA) from SPRING Singapore. This additional role runs concurrent with its role as the competition watchdog pursuant to the Competition Act (Cap. 50B)(CA). Within days of assuming its new role, the CCCS announced that it was conducting market studies on the online travel booking sector in Singapore.

(Background: Competition watchdog to study online travel booking sector, data portability issues)

## Flagging Out Deceptive Practices

True to its word, the CCCS released the findings of its market study on 30 September 2019 in which it flagged four common practices adopted by online travel booking operators which gave rise to consumer protection concerns:

- **Drip Pricing:** This involves the non-disclosure of both mandatory and optional charges upfront which then lures consumers into making a purchase based on incomplete price information. Examples include published prices that are initially stripped of taxes and fees to lure consumers before such charges are added to the final prices at the point of payment.
- **Pre-Ticked Boxes:** This happens when options for add-ons are pre-ticked for the consumer which can result in consumers buying unwanted add-on products (if they fail to opt-out by unchecking the pre-ticked boxes).
- **Strikethrough Pricing:** This involves the striking through of a previous higher price alongside the new and purported lower price offered. This can mislead consumers into making a purchase (or even paying a higher price) should the comparison between a current and a crossed-out price be false or misleading.
- **Pressure Selling:** Using false or misleading claims which can create a false sense of urgency for consumers to make a purchase based on inaccurate or misleading information. This may include assertions that the price is for a limited time only, that there are limited stocks remaining (when this is not true) or there being high demand or

interest in the product or services that the consumer is seeking (thereby inducing immediate purchase on false information).

The CCCS signalled that it is concerned with these practices which are common in the Singapore context. Indeed, many of us would have had first-hand experience of such practices.

## Online Travel Sector Not Alone

The online travel sector is not alone in being singled out for consumer protection issues. Since April 2019, the CCCS had commenced two separate investigations against food restaurant, *Charcoal Thai 1* and automotive retailer, *SG Vehicles* for unfair trading practices.

### Not So Thai-rrific

In the former investigation, CCCS had found that *Charcoal Thai 1* had advertised discounts for meals which are either available for a “limited period only” or “Ending Soon! 50% Discount” when the discounts actually continued for a period of two years since February 2016. The CCCS found that such claims not only misled consumers into believing that there is a price benefit and scarcity in the availability of the promotional prices but also gave *Charcoal Thai 1* an unfair advantage over other businesses that complies with the CPFTA. The CCCS investigations was subsequently closed when *Charcoal Thai 1* agreed to cease the unfair practice and not to engage in unfair practices under the CPFTA.

### COE No Enough

In the latter investigation, the CCCS commenced investigations into complaints against *SG Vehicles* for unfair trade practices relating to misrepresentations over the terms and conditions of the sale agreement, mainly relating to the delivery dates of motor vehicles and the bidding for certificates of entitlement (COE). While the *SG Vehicles* did not dispute the CCCS’s investigations, it declined to enter into a voluntary compliance agreement to stop engaging in unfair trading practices when it was requested to by the CCCS. The CCCS subsequently made an injunction application against *SG Vehicles* and a court order was subsequently issued by the parties’ mutual agreement. The court order prohibits *SG Vehicles* from, among others, whether by itself, its directors, servants, agents or otherwise engaging in unfair practices under the CPFTA or doing or saying anything, or omitting to do or say anything, if as a result a consumer might reasonably be deceived or misled into believing that the purchase price and/or COE is/are fixed or guaranteed.

## Play Fair or Be Prepared to Pay

Introduced in 2004, the CPFTA was enacted to provide consumers against unfair practices and to give consumers additional rights in respect of goods that do not conform to contract. The CPFTA stipulates the following as instances of unfair practices:

- 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; or
- To take advantage of a consumer if the supplier knows or ought to reasonably now that the consumer is not in a position to protect his own interests or is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

The above instances are not exhaustive and the Second Schedule of the CPFTA provides twenty-four specific instances that would constitute unfair practices. Consequences of breaching the CPFTA includes being subject to a declaration or injunction application taken out by the CCCS against the errant business. If granted, the courts can declare that the practice engaged in by the business (i.e. the supplier) is an unfair practice and an injunction is made to restrain the business from engaging in such unfair practice. Additionally, the courts can, when issuing such declaration or injunction make orders for the business to notify its customers in writing of the declaration or injunction that is in force against it and obtain the customers' written acknowledgment of the written notice. The court can also order that a statement that a court issued declaration or injunction has been issued against the business to be published on every invoice or receipt issued to a consumer. These are, without doubt, very catastrophic consequences for the business' market reputation.

(Background: Pursuant to Section 9 of the CPFTA)

## Playing Fair

In its draft *Guidelines on Price Transparency*, the CCCS has outlined several actions that will help improve price transparency. These includes:

- **Comprehensive Headline Pricing:** Businesses should ensure that any unavoidable or mandatory fees or charges are included in the total headline price or displayed prominently at the outset so that consumers can make informed decisions and are notified of all such fees and charges upfront.
- **Adopt Opt-In Approach for Optional Add-ons:** Add-ons should operate on an opt-in basis (i.e. not pre-ticked) and where pre-ticked boxes are used, businesses should disclose their qualifiers, terms and conditions upfront.
- **Using Genuine Price References:** Businesses should, when making price comparisons, use previous prices that has been offered on a regular basis or for a reasonable period. Here, businesses should also not raise prices before the discount period to create the impression of a greater price benefit when the discounts are eventually offered.
- **State Terms Clearly:** All terms and conditions including the right of cancellation, the right of refund (including the specified period for refund), trial periods, etc. should be displayed upfront and prominently.

(Background: The Draft CCCS Guidelines on Price Transparency was released on 30 September 2019 and is presently undergoing a public consultation phase.)

It should be noted that the above is not an exhaustive list of action items that can help improve price transparency. Similarly, other types of misleading pricing strategies that are not flagged out by the CCCS are not to be considered legal or permitted. Admittedly, these action items are not unduly onerous or difficult to observe and businesses ought to carefully consider their commercial and pricing strategies and steer clear of conduct that may be ultimately flagged as an unfair or anti-competitive practice. Businesses should seek legal advice when in doubt if a commercial or pricing practice infringes the CPFTA and/or the CA.

## Conclusion

All said, declarations and injunctions alone are not the most punitive consequences for being caught out for engaging in unfair or deceptive practices as against consumers. Any reputable business worth its weight would fear the loss of one thing above all else – it's hard earned market reputation. It therefore pays to play fair and all the more imperative for businesses to take heed of the practices that have been flagged out by the CCCS and take a fresh look at their selling and pricing practices. The new sheriff has, after all, only just started its rounds.

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