



**ANTITRUST COMMITTEE OF THE INTERNATIONAL BAR ASSOCIATION
UNILATERAL CONDUCT AND BEHAVIOURAL ISSUES WORKING GROUP
SUBMISSION IN RESPONSE TO THE COMPETITION AND CONSUMER
COMMISSION OF SINGAPORE'S DRAFT "CCCS GUIDELINES ON PRICE
TRANSPARENCY"**

1 Introduction and Purpose of Submission

1.1 Introduction

The International Bar Association's Unilateral Conduct And Behavioural Issues Working Group (the "Working Group") sets out below its submission on the CCCS Draft Guidelines on Price Transparency ("Draft Guidelines") conducted by the Competition and Consumer Commission of Singapore (the "CCCS").

The IBA is the world's leading organization of international legal practitioners, bar associations and law societies. The IBA takes an interest in the development of international law reform and helps to shape the future of the legal profession throughout the world.

Bringing together antitrust practitioners and experts among the IBA's 80,000 individual lawyers from across the world, with a blend of jurisdictional backgrounds and professional experience spanning all continents, the IBA is in a unique position to provide an international and comparative perspective. Further information on the IBA is available at www.ibanet.org.

1.2 Purpose of Submission

The Working Group welcomes the opportunity to respond to the public consultation by the CCCS on its Draft Guidelines.

The Working Group's central focus is to provide an international forum for thought leadership with respect to competition / antitrust law developments. Although the Draft Guidelines were drafted with consumer protection in mind, we understand from the accompanying Market Study on Online Travel

Booking Sector in Singapore (“Market Study”)¹ that some of the practices that are listed in the Draft Guidelines will also be assessed from a competition / antitrust angle. To that extent, the Working Group has sought to share its perspective specifically from a competition / antitrust angle.

2 Issues raised by the Draft Guidelines

2.1 Total welfare approach versus consumer welfare approach

As a general point, the Working Group understands that Singapore’s competition regime adopts a total welfare approach, instead of a consumer welfare approach.² Accordingly, with the CCCS’s transition to a single-agency design, the Working Group recommends the CCCS implement safeguards in order to avoid creating a bias towards consumer welfare in its competition enforcement, at the expense of total welfare.³

We note that a similar balancing approach applies in the context of Singapore’s consumer protection regime as well. In particular, we note that the consumer protection regime adopts a *caveat emptor* approach which aims to balance the interests of consumers and businesses.⁴

In order to properly manage the trade-offs between consumer protection and competition policy, the Working Group suggests that the CCCS identifies potential areas or cases where consumer protection and competition policy diverge (examples of potential areas are discussed below at paragraph 2.2).

Subsequently, in terms of institutional design, there should be mechanisms for cooperation between the CCCS’s Consumer Protection Division, Legal Division, and Enforcement Division when dealing with such matters. A good example of collaboration (though not in the context of intra-agency

¹ CCCS (2019). *Online Travel Booking Sector in Singapore CCCS Market Study*.

² *Re Abuse of a Dominant Position by SISTIC.com Pte Ltd* [2010] SGCCS 3, [7.3.3] at footnote 364 and [7.10.8] at footnote 457. See also Singapore Parliamentary Debates, Official Report (19 October 2004) vol 78 at col 917 (Vivian Balakrishnan, Senior Minister of State for Trade and Industry).

³ We note the CCCS had previously mentioned this possibility in its note to the OECD. OECD Policy Roundtable, ‘The Interface between Competition and Consumer Polices’ (2008). <<http://www.oecd.org/regreform/sectors/40898016.pdf>> accessed 10 October 2019.

⁴ Singapore Parliamentary Debates, Official Report (13 September 2016) vol 94 (Dr Koh Poh Koon, Minister of State for Trade and Industry).

cooperation) was the CCCS's recent collaboration with the Ministry of Health to develop medical fee guidelines that would increase price transparency for the benefit of consumers, but at the same time take into account competition concerns.⁵

2.2 Price transparency could lead to trade-offs between competition policy and consumer protection

The Working Group agrees that increased price transparency has pro-competitive benefits as it lowers the search costs and transactional costs of consumers. The Working Group also agrees that the misleading pricing practices laid out in the Draft Guidelines would result in harm to consumers, and that consumer protection and competition policy would be largely complementary in the context of the Draft Guidelines.

However, the Working Group highlights that increased price transparency could result in competition concerns in certain cases. In the DotEcon study commissioned by the CCCS⁶, it was highlighted that in the context of e-commerce, price transparency could also facilitate collusion between firms because monitoring each other's behaviour becomes easier. Additionally, there may be the unintended effect of shifting the focus of competition to price, resulting in a drop in product or service quality.

Another example would be the use of fee guidelines which, on the one hand, could benefit consumers by allowing them to access price information more easily, but on the other hand could result in competitors converging on those price points.

To manage these issues, platforms for intra-agency cooperation as discussed above will be required.

⁵ Fee Benchmarks Advisory Committee (2018), *Fee Benchmarks Advisory Committee Report*, <https://www.moh.gov.sg/docs/librariesprovider5/pressroom/press-releases/fee-benchmarks-advisory-committee-report.pdf?_sm_aui=ivV70ffSHH6042TM> accessed 10 October 2019.

⁶ DotEcon (2015), *E-commerce and its impact on competition policy and law in Singapore Market Study* for the CCCS.

2.3 Competition / antitrust considerations for pricing practices in the Draft Guidelines

The Working Group understands that the CCCS will assess pricing practices such as drip pricing and strike-through pricing from both a competition policy and consumer protection angle.

The Working Group agrees that consumer protection would reduce demand-side distortions by reducing information asymmetries, barriers to searching, and barriers to switching. In addition, recent studies on behavioural economics have revealed demand-side distortions that arise from behavioural biases.⁷

The Working Group agrees that demand-side solutions (or also known as consumer-facing remedies) can be used to complement traditional supply-side intervention by competition authorities. However, we note that under the Consumer Protection (Fair Trading) Act, Chapter 52A of Singapore, (“CPFTA”) the CCCS is only empowered to apply for an injunction to against a supplier who has engaged, is engaging or is likely to engage in an unfair practice or person(s) who knowingly abet, aid, permit or procure supplier(s) to engage in an unfair practice. Accordingly, the powers of the CCCS under the CPFTA does not currently extend to compelling suppliers to adopt specific practices to address demand-side deficiencies. The CCCS can, to some extent, address demand-side deficiencies through advocacy work. However, advocacy would be limited to the extent that the CCCS would not able to compel suppliers to adopt specific practices.

The Working Group suggests exploring consumer-facing remedies, where appropriate, for competition enforcement.⁸

2.4 Comments on the findings of the Market Study

Although not strictly within the scope of the public consultation, the Working Group would like to take the chance to briefly set out its observations on the results from the Market Study.

⁷ OECD Policy Roundtable, ‘Designing and Testing Effective Consumer-facing Remedies’ (2018). <[https://one.oecd.org/document/DAF/COMP/WP3\(2018\)2/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2018)2/en/pdf)>accessed 10 October 2019.

⁸ See for example, the discussion in the OECD Policy Roundtable, ‘Designing and Testing Effective Consumer-facing Remedies’ (2018). <[https://one.oecd.org/document/DAF/COMP/WP3\(2018\)2/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2018)2/en/pdf)> accessed 10 October 2019.

The Working Group agrees with the CCCS's approach to continue monitoring the practices identified in the Market Study, namely: (a) price and non-price parity clauses, (b) search rankings and ownership, (c) misleading user reviews (d) tying and bundling; (e) pricing algorithms; and (f) withholding of information. The Working Group also agrees with the conclusion that no immediate action is required given the CCCS's finding that there is currently limited evidence of harm arising from those practices in Singapore.

The Working Group agrees with the CCCS that in relation to price parity clauses, there is some ambiguity over the effects of price parity clauses. We note that competition authorities in Europe have chosen to allow narrow price parity clauses in some cases,⁹ but there are divergent approaches at the moment.

The Working Group would also like to highlight that search dominance is an area that has attracted attention from several regulators, and we agree that the CCCS should continue monitoring potential abuses arising from dominance over search rankings.¹⁰

3 Summary of Key Points

The Working Group is grateful for the opportunity to share its views on the CCCS's Draft Guidelines. Although the Draft Guidelines are on consumer protection, the Working Group would like to take the opportunity to comment on the Draft Guidelines from a competition / antitrust angle.

The Working Group would suggest the CCCS consider the following competition/antitrust aspects:

- In cases where consumer protection objectives diverge from competition policy, the Working Group suggests that there should be mechanisms for intra-agency cooperation to deal with the matter holistically. Specific examples include fee guidelines or in the e-commerce context.

⁹ Most recently, the Düsseldorf Regional Court decided that narrow price parity clauses are necessary to ensure a fair and balanced exchange of services between the parties, and upheld such a clause on the basis of the ancillary restraints doctrine. See Case No. VI-Kart 2/16 (V).

¹⁰ See for example, the European Commission's decision against Google in 2017. https://europa.eu/rapid/press-release_IP-17-1784_en.htm accessed 19 October 2019.

- In relation to the points raised in the Market Study that accompanies the Draft Guidelines, the Working Group generally agrees with the conclusions of the CCCS.

21 October, 2019