

13 December 2024

Director
Consumer Policy Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Dear Director

Unfair Trading Practices - Design of proposed general and specific prohibitions

The Australian Travel Industry Association (ATIA), the peak body for a broad array of Australian travel businesses, welcomes the opportunity to make a submission in relation to the consultation on the design of proposed general and specific prohibitions on unfair trading practices. ATIA supports the submission of the Australian Chamber of Commerce and Industry (ACCI), in that the proposal does not appear to get the balance right in terms purporting to more comprehensively regulate unfair trading practices, while also providing clarity around compliance obligations for businesses. ATIA's submission focuses on additional matters of particular relevance to the travel industry.

The law in relation to consumer matters must be clear and easy to understand by both the businesses that must comply with their obligations, as well as consumers who must understand their rights. In the proposed approach there appears to be significant scope for confusion as to when conduct may fall within the proposed new provisions. This imposes unnecessary administrative and potentially legal burden on businesses in understanding their legal obligations and seeking to comply.

The proposed 'grey list', a "non-exhaustive list of examples of conduct which may, depending on the circumstances, meet the test" of being an unfair trading practice, is vague and open to interpretation. ATIA is particularly concerned around the proposal to include conduct consisting of both "the omission of material information", as well as "the provision of material information to a consumer in an unclear, unintelligible, ambiguous or untimely manner, including the provision of information that overwhelms, or is likely to overwhelm, a consumer". This appears to place businesses in an overly burdensome position of determining where the line is in terms of the provision of information.

In addition, it is not clear on the face of the proposed provisions the extent to which it is intended that intermediaries are captured by each of these provisions. It would appear to be an unworkable situation where a travel agent, for example, was required to determine whether terms and conditions set by an airline or other supplier were compliant with the new provisions, and if not, to interpret and re-word them for the consumer. It also must be noted that in relation to the travel industry, the Government has announced its intention to establish an Aviation Customer Rights Charter which aims to give customers greater certainty about their rights when it comes to air travel, so this development must also be taken into account when determining the appropriateness of any new additional requirements.

The role of intermediaries must also be considered in relation to any regulations regarding dynamic pricing. The Consultation Paper notes Treasury is considering how to address concerns in relation to dynamic pricing, where the price increases during the course of a purchasing process. It notes these concerns are growing in relation to ticketing, specifically the potential for dynamic pricing to be used to raise the price of **event tickets** during the course of a purchasing process. The Consultation Paper notes it is considering this as distinct from 'surge' pricing, where prices are raised in response to increased demand for items in low supply, and recognises that this is commonly used in the air travel and hotel sectors.

Where an intermediary is used to book air travel, this is a process that can commonly take some time, in between the provision of quotes, consideration by the consumer and acceptance by the airline. On occasions, the price will change at no fault or control of the intermediary, with pricing of air tickets within the remit and control of the airline. ATIA submits that any regulatory response must address the policy issue at hand, which appears to be largely in relation to addressing concerns about dynamic pricing in relation to event tickets (where the purchasing process is ordinarily a matter of minutes), and avoid unintended consequences. That is, it must not inadvertently impact surge pricing, and it must not hold agents responsible for pricing matters outside of their control.

If the Government does determine to proceed with implementing the proposed provisions, given the opaque nature of the proposed provisions it is vitally important that resourcing and funding is allocated to an educational campaign to ensure businesses have the knowledge and resources they need to understand the provisions and comply. This function could sit with the ACCC or industry associations; either way it must be an industry specific approach.

Yours faithfully

Ingrid Fraser

Director of Public Policy & Advocacy
Australian Travel Industry Association