

It's all too familiar. Enticed by the promise of a cheap airfare, footy or concert ticket only to discover at the "confirm purchase" stage that the final price is much more than you bargained for. The Australian Competition and Consumer Commission (ACCC) has warned earlier this year that it is at an advanced stage of investigating businesses which engage in drip pricing and is planning to launch legal action in 2014.

Drip pricing is the practice of incrementally disclosing additional fees and charges rather than making the complete price known at the outset of a transaction. The pricing technique appears to be most prevalent within the online travel and events market.

The Problem

Companies often bait consumers by advertising a low headline price then add extra compulsory costs such as credit card, booking and administration fees towards the end of the purchasing process. At this stage, consumers have invested too much time to consider opting out.

The ACCC have identified that the problem is twofold:

- 1 Consumers are enticed into misleading and deceptive transactions.
- 2 The promotion of anticompetitive conduct in which competitors who engage in honest advertising lose out. The practice also distorts competitive practices by making it impossible for consumers to effectively compare prices prior to making a purchasing decision.

Unlike upselling or "a la carte" pricing, where consumers have the option of adding extras to their purchase such as extra luggage allowance or in-flight entertainment, victims of drip pricing cannot purchase the service or product without paying the additional costs.

The ACCC's Ammunition

The consumer watchdog has stated that it intends to rely on misleading and deceptive provisions under the Australian Consumer Law (ACL). Businesses that practice drip pricing may be exposed to civil liability and a range of other remedies such as publicity orders and injunctions pertaining to future conduct. Courts appear willing to interpret the ACL broadly and it is sufficient to show that the business engaged in conduct that was "likely" to mislead.

The ACCC may also seek to rely on the ACL's prohibition of component pricing where businesses divide the cost of an item into components "(i.e. AU\$50 + GST without displaying that the total price as AU\$55). This prohibition does not apply to costs the consumer can opt out of.

What You Need to Do

- Be aware of your potential to contravene the ACL if your business practices drip pricing.
- Be upfront about the total cost at the outset of any transaction.
- Revise your pricing techniques so that charge options are deselected by default rather than being automatically added or ticked.

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