

# PERSPECTIVE

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**Singapore** | 30 June 2020

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## **Misleading Price Advertising in Malaysia is Still Widespread**

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### **EXECUTIVE SUMMARY**

- The practice of so-called “plus-plus” (++) pricing, in which fees and charges are not displayed fully upfront to consumers, is still endemic in Malaysia. It typically adds an extra 16% to the advertised price.
- Failure to fully disclose the true payable cost of products and services is unfair to consumers, provides an unfair competitive advantage over other businesses, and is outlawed in several other nations.
- Four different federal laws potentially prohibit the practice, but an ISEAS survey shows that the practice still occurs extensively in the restaurant, hotel and car hire sectors.
- Businesses and consumers are often confused as to who is responsible for policing these laws. The only recent enforcement action has been by the Malaysian Aviation Commission. Little appears to have been done by the Ministry of Domestic Trade and Consumer Affairs.
- Outlawing this form of drip pricing would be a simple but effective micro-economic reform.

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## **PRICING PRACTICES IN MALAYSIA**

How much does it really cost to buy a meal? To book a hotel room? To hire a car? What is the real cost of an airline ticket? And how do those prices compare to what other businesses are offering? The truth is frequently hidden from consumers in Malaysia.

In many cases, advertised prices are not what the customer is charged. They often substantially understate the final amount that must be paid, as there are frequently additional mandatory fees for taxes and services which are not included in the headline price.

A common sight in many advertisements, displays, menus and online booking processes across Malaysia is the presence of the “++” symbol. So-called “plus-plus” pricing includes a fine-print disclaimer that, in addition to the stated cost, purchasers must also pay relevant government taxes, such as the sales and services tax (SST, which accounts for one + sign), and a further service charge to the business (the other +).

This amount is substantial. All added up, it is typically an extra 16% on top of the given price. The SST tax component is 6%, and is applied to a range of products and services (including, but not limited to, hotels, insurance, gaming, legal and accounting services, employment agencies, parking and electricity).

Then there is an additional 10% service fee levied by the business. A completely discretionary charge, it is not a tax or government fee. It is widely argued that the impost is charged in lieu of a tip, and that most of the proceeds are paid to non-managerial staff in the business concerned (Kaur 2020; Royal Malaysian Customs Department n.d.). However, other businesses treat it simply as an additional income and profit source. Regardless of its purpose, it is part of the price, but one which the ++ vendor deliberately chooses to hide from the customer at first glance.

Not all businesses mislead customers about fees. Many use the “single pricing” model, which wraps all expenses and taxes into the one stated price. In effect, what customers see is what they get. The headline price is the actual cost that will be charged, nothing more and nothing less. Such businesses often make reference to the term “prices are nett”, or equivalent. This means all taxes, fees and other charges are already included in their advertised costs, and there is nothing else to pay.

Plus-plus pricing can mislead consumers and distorts efficient market behaviour. For these reasons, some countries outlaw this practice, and require businesses to provide single prices to consumers. These include Singapore,<sup>1</sup> Australia (where it is referred to as a “component pricing” law), New Zealand, Ireland and the United Kingdom. In these nations, businesses are expected to clearly state upfront, at all times, the full final price of a product or service, including all mandatory taxes and other charges.

At first glance, Malaysia also seems to outlaw this practice. But in reality, it is widespread in the country.

## WHY DOES IT MATTER?

Plus-plus pricing (sometimes also known as “drip pricing” or “partitioned pricing”) is really a negative to consumers, rival businesses and the broader Malaysian economy.

Pricing is an important piece of information needed in any purchasing process. Whilst other factors (such as quality, reputation and reliability) also matter, consumers use prices as a key indicator when making a decision to buy or not. Can they afford the item? Is it worth the price being asked? Does another business offer a comparable product for a better fee? However, when the cost is obscured, or only partially revealed, then consumers are unable to make fully informed comparative decisions.

Businesses also require clear pricing knowledge, as it allows them to operate in a more fully informed market in which they can judge what price they will set, and how this stands relative to other offerings from competing firms. Price signals are an important factor in the competitive process and generate an ongoing environment of cost-conscious dynamic tensions that help drive efficiencies.

The use of plus-plus pricing obscures the true cost of products and services. It is a system which requires purchasers and rivals to quickly calculate and add on another 16% to any given headline price, thus hiding the full upfront asking price. This opacity, or lack of clarity, creates information asymmetry that works to the advantage of the selling firm, but not to any other party.

Consumers find it difficult to compare and contrast price offerings. Firms who offer products at a single price become relatively disadvantaged, as ++ competitors can advertise and promote items at prices much lower than their actual sales price.

These impacts are not just theoretical; they have been shown to have a clear impact on consumer purchasing behaviour. Marketing research suggests that consumers who are presented with a price in drip-feed or partitioned fashion (where only part of the true cost is initially disclosed) will tend to under-estimate the real full charge to them, and will be more inclined to buy such products than those that reveal the upfront total price (Ahmetoglu, Furnham & Fagan 2014).

## FOUR LAWS, ONE AIM

Three different general federal laws, one voluntary all-industry code, and a legislated mandatory federal code for one industry (airlines) all exist in Malaysia to police pricing displays and practices. These are the *Consumer Protection Act*, the *Trade Descriptions Act*, the *Price Control and Anti-Profiteering Act*, the Malaysian Code of Advertising Practice, and the Malaysian Aviation Consumer Protection Code (part of the *Malaysian Aviation Commission Act*). All appear to outlaw drip pricing, but only one has been effectively enforced.

The oldest relevant legislation is probably the most generalised. Section 12(1)(a) of the *Consumer Protection Act 1999* makes it an offence if a business "... gives to a consumer an indication which is misleading as to the price at which any goods or services are available."

The *Trade Descriptions Act 2011* contains two sections – 14 and 15 – which prohibit misleading, inaccurate or incomplete price information. Most relevantly, Section 15 states: "Where in any advertisement the price of any goods or services is quoted, such price shall, unless the contrary appears, be deemed to include all eligible government taxes and duties and any other charges."

The most recent addition to this body of laws is the 2017 amendments to the existing *Price Control and Anti-Profiteering Act 2011*, which allows the Minister to make single pricing compulsory. At the time, it was part of a suite of measures introduced as part of the implementation of the Goods and Services Tax (GST) regime. Speaking in the Dewan Rakyat, then Minister for Domestic Trade, Consumerism and Cooperatives, Datuk Seri Hamzah Zainuddin, argued that the changes would help consumers make better informed purchasing decisions (The Star 2017):

*"... What you see is what you get. For example, if an item costs RM106 including taxes, that price must be stated in the display and no other charges can be added on after that."*

Under these provisions, a business was required to disclose all government and other charges payable for any goods or services. A single price had to be displayed for goods and services, showing the full cost including all government taxes, duties, charges and credit card fees (Shagar 2017).

As another commentator noted: "This means no more notices of 'subject to 6% GST and 10% service charge' will be tolerated. The listed price you see is the price you pay, no surprises" (Lim 2017).

The adoption of a national single-price policy, as the concept was termed in the Malaysian media, was strongly supported by a range of consumer organisations who had been arguing for the reform for some time, including the Muslim Consumer Association, the Consumer Association of Penang, and the Federation of Malaysian Consumer Associations. Representatives of these groups particularly pointed out existing problematic practices in the tourism and leisure sector as an example of the sort of egregious behaviour a single-price law could eliminate (The Star 2016).

Whilst other provisions related more directly to the administration of the GST have now been removed in the wake of the demise of that tax and its replacement with the SST, Section 10(b) remains on the books. The wording of the law is unambiguous:

*10b. (1) Where in the course of a trade or business prescribed by the Minister, any person displays, advertises, publishes or quotes or causes to be displayed, advertised, published or*

*quoted, in any manner, the prices of any goods or charges for any services, such person shall include in such prices or charges:*

*(a) all government taxes, duties and charges; and*

*(b) all other charges which are to be imposed by the person on the goods or services.*

*(2) Any person who contravenes subsection (1) commits an offence.*

All three of these laws are administered by the Ministry of Domestic Trade and Consumer Affairs, as it is currently named. There appears to have been little effort by the Ministry to enforce these laws, and the Federation of Malaysian Consumer Associations has noted that no prosecutions for breaches appear to have been undertaken (pers. comm. 2020).

The Ministry also has a 14-member Advertising Committee, established under the *Consumer Protection Act*, which exists to advise the Minister on any issues relating to advertising, to examine complaints regarding breaches of the Act, and to undertake public information campaigns. Once again, however, there appears to be little substantive activity from this body on this or other pricing issues.

Consumers can also take matters to the Tribunal for Consumer Claims (*Tribunal Tuntutan Pengguna Malaysia*, or TTPM). The Tribunal makes it clear that claims can also be lodged for “misleading indications as to the price at which goods or services are available,” but provides no details on how many such matters have been dealt with or the complaint outcomes.

There appears to be a degree of consumer confusion as to which government agency is actually responsible for pricing laws. This is not surprising, as departments such as Customs and Inland Revenue are also involved in price regulation and tax collection matters. Indeed, the Royal Malaysian Customs Department notes this on its website, and a number of journalists have also made similar observations (Kaur 2020).

The final general national measure is the Malaysian Code of Advertising Practice, operated by the Advertising Standards Advisory Malaysia (ASA). The ASA is a voluntary industry body consisting of five peak national bodies in the advertising, newspaper, media and outdoor advertising sectors. The Code is a mechanism for industry self-regulation, and includes a Clause 6 which states that “All advertisements should conform to the principles of fair competition as generally accepted in business.” However, this is a subjective matter of self-determination. The ASA has no formal enforcement powers to police the practice, punish breaches or ensure compliance (ASA 2020).

One specific industry, aviation, has explicit laws regarding consumer pricing. Section 3 of the *Malaysian Aviation Consumer Protection Code 2016*, a mandatory industry code instituted under the provisions of the *Malaysian Aviation Commission Act 2015*, requires airlines to indicate the final, all-inclusive price of tickets in any advertising. In January 2020, the Commission imposed a RM 200,000 penalty on both AirAsia and AirAsiaX for breaching this provision (Malaysian Aviation Commission 2020).

## **PRICING IS STILL WIDESPREAD**

An examination of current advertising and marketing by firms in Kuala Lumpur suggests that there is still a sizeable number of businesses engaging in ++ pricing practices.

Comprehensive data on advertising practices of Malaysian businesses is difficult to obtain; however, it is possible to examine websites. As one of the key marketing tools in contemporary advertising and promotional techniques, websites constitute an easily-accessible, widely-used consumer engagement tool.

A review of websites of a range of restaurants, hotels and car hire companies was recently undertaken by the author.<sup>2</sup>

Amongst the restaurant sector, plus-plus pricing still appears to be extensive. A study of 15 nominated “best restaurants in KL” showed that 11 firms still used this on their menu. Only two showed nett prices, and two failed to disclose any costs.

Full disclosure is more commonly practiced by hotels. Eight of the 15 “best hotels in KL” examined provided fully-inclusive single price quotes for room bookings, whereas the remaining seven continued to engage in drip pricing by adding additional taxes and charges only at the end of the booking process.

A smaller sample of car hire firms was used, as there are fewer major chains with online booking capacity. Of the five chains, three conformed with single-pricing principles, whilst the other two quoted only partial prices upfront with their promoted daily rental rates failing to include the SST component, which was only made clear later in the transaction.

## **CONCLUSION**

Clearly, ++ pricing remains widespread in a number of sectors. Whilst Malaysians may well now be familiar with the practice (and familiarity often breeds acceptance), its anti-consumer and anti-competitive detriments still remain. Moreover, the rule of law is weakened when both the letter and spirit of legislation is not enforced, or given only lip service.

Governments, consumer groups and business associations all have an interest in reforming the law and ensuring that single pricing becomes the only acceptable form of pricing practice. Governments need to have their laws complied with; consumers are entitled to accurate full price disclosure at all times; and businesses should not be disadvantaged by rival firms engaging in opaque pricing practices.

This has the potential to be a small but important micro-economic reform that can empower consumers, allow all businesses to compete on an equal footing, and put in place a permanent driver for greater efficiency and business competitiveness.

Change is possible. Consumer groups such as the Federation of Malaysian Consumer Associations continue to push for reform in the area, and the recent enforcement actions of the Malaysian Aviation Commission show that regulators can successfully enforce pricing laws.

Whether other arms of government will follow their lead is an open question. According to the current website of the Ministry of Domestic Trade and Consumer Affairs (2020), the agency “has identified the need to review the National Consumer Policy (NCP) and Consumer Master Plan (CMP)”. The Ministry goes on to state that such a review is important in “protecting the interests of consumers in this country.”

The continued existence of plus-plus pricing works against the interests of consumers and of many businesses. It persists despite being illegal. Reform should be a priority issue to consider during any such review, as should greater enforcement by Malaysia’s consumer law and pricing regulators.

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<sup>1</sup> In Singapore, an exemption is provided for both the food & beverage and the hotel industries.

<sup>2</sup> This was a convenience sample of the “best businesses” in each sector as chosen by reviewers on TripAdvisor, which in turn is drawn from several thousand consumer reviews.

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