



Fair Trading Commission

Position Paper for the Exclusive Use of Valuation Panels

June 27, 2024

Introduction

The Fair Trading Commission (FTC) has conducted numerous investigations into the practice by some businesses to create and manage a list of preferred complementary service providers they engage with. The exclusive list of preferred providers is often referred to as a panel and its use is widespread among commercial banks, insurance companies and mortgage banks, among others.

Proposed Guidelines for the Creation of Regulations and Eligibility Criteria

While the FTC is aware that there is legitimate business justification for the practice, it also acknowledges that the use of panels by businesses with a large customer base may create a distinct competitive advantage for preferred providers over excluded providers. Hence, it is the responsibility of the FTC to strike the right balance to ensure that the use of panels does not unduly lessen competition.

To ensure that empanelment procedures are conducive to competition, the FTC proposes that businesses establish unambiguous, comprehensive, and transparent regulations and eligibility

criteria for service providers seeking inclusion in these panels. To this end, the FTC has identified measures which businesses may adopt to minimise their exposure to competition law enforcement actions.

Measures when Establishing and Maintaining Panels

i. **Increase Transparency and Accessibility in the Application and Selection Process.**

Regulations and criteria relating to the panel selection process should be easily accessible to consumers and service providers. Additionally, in the interest of transparency and fairness, businesses should provide unambiguous reasons to applicants if they are rejected from the panel. Furthermore, a mechanism should be established to inform previously rejected applicants of any new opportunities that may arise, ensuring that all qualified service providers have equitable access to participation in the panel. This commitment to openness and communication fosters trust and ensures a level playing field for all potential panellists.

ii. **Regulations and Business Behaviour Should Promote Consumer Choice.**

Businesses must list a minimum of three non-interconnected service providers on their panels. This provision enables consumers to select based on considerations of cost-efficiency and trustworthiness. When establishing empanelment regulations, businesses have the discretion to specify a maximum number of service providers permitted on their panels. This maximum number must be clearly outlined in the regulations, and service providers meeting the criteria cannot be refused unless the maximum capacity is reached. This approach strikes a balance, safeguarding consumer choice while affording businesses flexibility in managing panel size.

iii. **Panels Must be Reviewed Once Every Five Years.**

To mitigate the risk of prolonged, exclusive arrangements that could stifle competition and inhibit new entrants from participating effectively in the market, businesses are mandated to conduct a thorough review of their panel of service providers at least once every five years. During this review, current panel members may be required to re-apply, providing an opportunity for reassessment of their qualifications and performance. Moreover, previously rejected service providers as well as new applicants should be permitted to apply for inclusion in the panel. This

periodic review mechanism promotes market dynamism, prevents monopolistic tendencies, and ensures that the pool of service providers remains diverse and competitive over time.

iv. For Eligibility, Panellists Must Adhere to All Licensing and Qualification Requirements.

Panellists must meet licensing standards, ensuring they are qualified and adhere to professional regulations. This enhances consumer protection, industry integrity, and trust in panel decisions. Licensure acts as a safeguard against misconduct, bolstering members' credibility. Overall, it underscores the commitment to quality, professionalism, and accountability in panellist selection.

Conclusion

The FTC maintains the position that empanelment, once regulated, has the potential to boost competition in the relevant industries. Businesses have the responsibility to establish said regulations under the guidelines of the FTC to ensure empanelment procedures do not hinder the competitive process.