

Annex (1)

COMMITMENT TO COMPLY WITH REQUIREMENTS OF INFRINGEMENT NOTICE ISSUED TO

CHINA ASIA PROPERTY LIMITED

Whereas:

- A. On 26 January 2021, the Competition Commission (“**Commission**”) issued an Infringement Notice to China Asia Property Limited (“**Company**”) under section 67 of the Competition Ordinance, Cap. 619 (“**Ordinance**”) (“**Infringement Notice**”);
- B. The Infringement Notice was issued on the basis that the Commission had reasonable cause to believe that:
 - (a) The Company has contravened the First Conduct Rule by having facilitated the making and giving effect of an anti-competitive agreement between Gray Line Tours of Hong Kong Limited (“**Gray Line**”) and Tink Labs Limited (“**Tink Labs**”) regarding tickets for certain tourist attractions and transportation services that were being sold by Gray Line and Tink Labs at the premises of City Garden Hotel (“**Subject Arrangement**”); and
 - (b) The contravention involved serious anti-competitive conduct within the meaning of section 2(1) of the Ordinance;
- C. Pursuant to the Infringement Notice, the Commission offered not to bring proceedings in the Competition Tribunal (“**Tribunal**”) against the Company and all current and former directors, officers, employees and representatives of the Company and subsidiaries, on condition that the Company makes a commitment to comply with the requirements of the Infringement Notice, as particularised below (“**Requirements**”).
- D. Nevertheless:
 - (a) As per section 76(2) of the Ordinance, if the Commission has reasonable grounds for suspecting that the Company has failed to comply with any of the Requirements, it may bring proceedings in the Tribunal against the Company for the contravention specified in section 2 of the Infringement Notice; and

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- (b) As per section 63(1) of the Ordinance, if the Commission considers that the Company has failed to comply with the commitment to comply with the Requirements, the Commission may apply to the Tribunal for an order under section 63(2) of the Ordinance.
- E. The term “**Staff**” shall, unless the context otherwise requires, mean all directors and employees employed by the Company at the relevant time under the Requirements of this Commitment.
- F. Unless the context otherwise requires, capitalised terms in this Commitment shall have the same meaning as those prescribed by section 2 of the Ordinance.

THE REQUIREMENTS

The Company hereby makes a commitment (“**Commitment**”) to the Commission to comply with these Requirements:

Admission of Contravention

1. The Company admits that it has contravened section 6(1) of the Ordinance as a result of it having given effect to the Subject Arrangement as a facilitator as more particularly described in Section 2 of the Infringement Notice.

Cessation of Conduct

2. The Company shall:
- (a) To the extent not already done so, immediately cease to give effect to the Subject Arrangement by terminating all participation in and/or terminate the Subject Arrangement;
- (b) To the extent not already done so, immediately cease all operations and/or arrangements which seek to uphold the Subject Arrangement, whether by monitoring of the prices of all products sold by Tink Labs and/or Gray Line or otherwise; and
- (c) Confirm to the Commission in writing that the Requirements in this paragraph 2(a) and 2(b) have been complied with within 7 working days from the publication of this Commitment.

Circulation of the Infringement Notice and Commitment

3. Within 14 working days from the publication of this Commitment, circulate by either soft or hard copy to all of the management staff of the Company and all staff from the Sales & Marketing, Revenue Management and Catering Sales the following documents together with a reminder that they must be considered carefully:
 - (a) The Infringement Notice (other than the confidential information appearing in the endnotes being redacted in accordance with paragraph 7 of the Infringement Notice); and
 - (b) The Commitment.

Appointment of an Independent Compliance Advisor

4. The Company shall, in accordance with the procedures set out in paragraph 5 below, appoint an independent (i.e. external) competition law compliance advisor (“**Compliance Advisor**”) for the purpose of:
 - (a) Identifying the internal inadequacies of the Company’s operations (including but not limited to any compliance program(s)) which gave rise to the Subject Arrangement;
 - (b) Providing the Company with any necessary advice and rectifying measure(s) to minimize the risk of the Company making and/or giving effect to any arrangement and/or being engaged in concerted practice which is the same as or similar to the Subject Arrangement in future.
5. Unless otherwise agreed with the Commission, the Compliance Advisor shall be appointed in accordance with the following procedures:
 - (a) Within 1 month of the publication of this Commitment, the Company shall nominate and submit to the Commission the names of one (1) person (“**Nominated Advisor**”) which it considers appropriate;
 - (b) The Commission will, within 1 month of receiving the name of the Nominated Advisor, indicate to the Company as to whether it considers that person to be suitable to act as the Company’s Compliance Advisor;

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- (c) Where the Commission has indicated that it considers the Nominated Advisor to be appropriate, the Company shall, within 2 weeks of receiving the Commission’s indication, appoint the Nominated Advisor to act as the Company’s Compliance Advisor;
 - (d) Where the Commission has indicated that it does not consider the Nominated Advisor to be appropriate, the Company shall, within 2 weeks of receiving the Commission’s indication, provide two (2) additional names of persons (“**Additional Nominated Advisors**”) it considers appropriate to act as the Company’s Compliance Advisor;
 - (e) The Commission will, within 1 month of receiving the list of Additional Nominated Advisors, indicate to the Company as to whether it considers the persons nominated to be appropriate to act as the Company’s Compliance Advisor;
 - (f) The Company shall, within 2 weeks of receiving the Commission’s further indication at this paragraph 5(e) above, appoint whichever Additional Nominated Advisor the Commission considers appropriate to act as the Company’s Compliance Advisor;
 - (g) Where the Commission considers that none of the Additional Nominated Advisors is appropriate to act as the Company’s Compliance Advisor, the Commission shall nominate three (3) persons (“**Commission’s Nominated Advisors**”) to the Company. Unless otherwise agreed by the Commission, the Company shall, within 1 month of receiving the list of the Commission’s Nominated Advisors, appoint at least one (1) of the Commission’s Nominated Advisors to act as the Company’s Compliance Advisor; and
 - (h) For the avoidance of doubt and subject to the applicable laws and regulations, the Commission may request any documents and information from the Company relating to the proposed appointment of the Nominated Advisor for the purpose of ascertaining his/her suitability to act as the Company’s Compliance Advisor.
6. As part of the Compliance Review, the Company shall ensure that the terms of engagement of the Compliance Advisor do cover the following responsibilities and obligations:
- (a) To identify the internal inadequacies of the Company’s operations (including but not limited to any compliance program(s)) which gave rise to the Subject Arrangement;

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- (b) To identify the area(s) in the management and operation of the Company in which the Company may be at risk of knowingly or inadvertently engaging in the same type of contravention in future (i.e. the facilitation of any practice of fixing and/or controlling the price of the goods and/or services offered by its suppliers (“**Compliance Risks**”));
- (c) To provide express recommendations to the Company as to how the Compliance Risks may be mitigated. These recommendations must, at a minimum, include:
 - (1) Specific measures which the Company can adopt/ implement to enable it to identify and rectify existing and potential Compliance Risks;
 - (2) Operational checks and balance which the Company should implement with a view to avoiding and/or minimizing the Compliance Risks;
 - (3) The adoption and provision to the Company’s Staff of (i) specific policies and operational manuals; and (ii) bespoke competition training programmes to address the Compliance Risks;
 - (4) The adoption of a whistleblowing policy for the Company’s Staff and an effective complaints mechanism for the Company’s suppliers and customers;
 - (5) The appointment of specific directors or persons involved in the management of the Company to act as the Company’s designated compliance officers and be responsible for the Company’s compliance with the Commitment; and
 - (6) A specific timetable for the Company for the implementation of all of the above.

The Compliance Review and Compliance Report

- 7. The Company shall, within 6 months of the appointment of the Compliance Advisor, cause the Compliance Advisor to prepare and submit a written report (“**Compliance Report**”) to the Commission setting out the findings of the Compliance Review including:
 - (a) The internal inadequacies of the Company’s operations (including but not limited to any compliance program(s)) which gave rise to the Subject Arrangement;

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- (b) All of the steps which the Company has taken to comply with this Commitment;
- (c) All of the key steps which the Compliance Advisor has taken in preparation of the Compliance Report;
- (d) The level of cooperation / assistance which the Company has afforded to the Compliance Advisor for the purpose of the preparation of the Compliance Report; and
- (e) All of the recommendations which the Compliance Advisor has made pursuant to its terms of engagement.

Annual Report

- 8. Unless otherwise agreed by the Commission, the Company shall cause the Compliance Advisor to provide a written report (“**Annual Report**”) to the Commission setting out the status of the Company’s implementation of the recommendations in the Compliance Report. This report must be provided on the respective first and second anniversaries of the date of the Compliance Report.
- 9. The Annual Report must be endorsed by the Company by way of written resolution.

Preparation of Reports and Best Endeavours

- 10. It shall be a specific condition in the appointment of the Compliance Advisor that when preparing and submitting the Compliance Report and Annual Report to the Commission, the Compliance Advisor must fully and accurately set out all the matters contained in paragraphs 7 and 8 of these Requirements.
- 11. The Company must, on a best endeavour basis:
 - (a) Provide all necessary support to the Compliance Advisor for the purpose of preparing the Compliance Report and Annual Report; and
 - (b) Carry out all of the recommendations (if any) as set out in the Compliance Report.

Costs of Complying with this Commitment

- 12. Any costs of and incidental to complying with any of these Requirements in this Commitment shall be borne by the Company.

Period of Time, etc.

13. Where the Company seeks an extension of time to comply with any of these Requirements in this Commitment, it shall immediately inform the Commission in writing of such an intention, together with reason(s) as to why a time extension is required. The Commission may exercise its discretion to extend the time for complying with any of the above Requirements.
14. Where an act prescribed above is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
15. Where the time prescribed above for doing any act expires on a Saturday or a general holiday, the act shall be considered to be done in time if done by 4:00 pm on the next working day.
16. A “working day” means any day other than a Saturday, Sunday or any other day that is a public holiday in Hong Kong.
17. This Commitment will expire upon completion of items 2 to 9 of these Requirements.
18. The Company may apply to the Commission in writing for variation(s) of any of these Requirements prior to the expiry of the Commitment and the Commission may exercise its discretion to accept the application or not.

Signed for and on behalf of:

China Asia Property Limited

[Signed]

Date: 2 February 2021

Name: [Name of signatory]

Position: [Position of signatory]