

INFRINGEMENT NOTICE

**NOTICE ISSUED UNDER SECTION 67 OF THE COMPETITION ORDINANCE (CAP. 619)
REGARDING ANTI-COMPETITIVE CONDUCT IN THE SALE OF TOURIST ATTRACTIONS
AND TRANSPORTATION TICKETS IN HONG KONG**

This is a formal notice with legal effect. Please read it carefully. You may wish to obtain legal advice before responding.

To: **China Asia Property Limited**
[Address of legal representative]

26 January 2021

Confidential information has been redacted from this non-confidential version for publication and is indicated with the designation [...].

1. INTRODUCTION AND SUMMARY

1. The Competition Commission (“**Commission**”) has commenced an investigation (Case Number: EC/0271) pursuant to section 39 of the Competition Ordinance, Cap. 619 (“**Ordinance**”) into:
 - (a) Gray Line Tours of Hong Kong Limited (“**Gray Line**”) - a Hong Kong limited liability company engaging in the provision of travel-related services such as local sightseeing tours, arrangement of hotel accommodation and the sale of, amongst other things, tickets for tourist attractions and transportation in Hong Kong;
 - (b) Tink Labs Limited (“**Tink Labs**”) - a Hong Kong limited liability company that provided, amongst other things, travel related services to patrons of licensed hotels in Hong Kong *via* its flagship smartphone - *handy*, on which tickets for tourist attractions and local tours were sold (“**Handy Devices**”); and
 - (c) A number of undertakings engaging in the business of providing hotel services in Hong Kong including the hotel known as City Garden Hotel (“**Hotel**”).
2. In particular, the Commission was investigating whether or not Tink Labs and Gray Line had, together with the Hotel acting as a facilitator,¹ made and given effect to an agreement or had engaged in the concerted practice of fixing and controlling the prices of the Relevant Tickets (as defined in paragraph 12 below), being tickets for certain tourist attractions and transportation services that were being sold by Gray Line and Tink Labs at the premises of the Hotel (“**Subject Arrangement**”).
3. Following the Commission’s investigation, the Commission has reasonable cause to believe that:

¹ For the purpose of this Infringement Notice, the characterisation of “facilitator” / “facilitating [the cartel]” is used to refer to the fact that the Hotel while not being active in the cartelised market (i.e. the sale and purchase of tourist attractions and/or transportation tickets) for the purpose of the infringement had nonetheless actively contributed to the implementation of the cartel on that market: c.f. *Re. Yen Interest Rate Derivatives Cartel* (Comp/AT.39861) at §194; and *AC-Treuhand AG v European Commission (Re Heat Stabilisers Cartel)* [2015] 5 C.M.L.R. 26 at §§26 and 36-39.

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- (a) At all material times, Gray Line and Tink Labs were competing undertakings that sold the same tourist attractions and transportation tickets in Hong Kong;
 - (b) China Asia Property Limited (“**CAPL**”) had engaged in the economic activity of providing hotel services in the name of the Hotel. CAPL is, for this purpose, an undertaking;
 - (c) From around September 2016 until May 2017, CAPL had acted as a facilitator in the Subject Arrangement and thereby gave effect to the Subject Arrangement with Gray Line and Tink Labs.
4. The Subject Arrangement had the object of harming competition in Hong Kong and constitutes a contravention of the First Conduct Rule in section 6 of the Ordinance. The Subject Arrangement is also serious anti-competitive conduct as defined in section 2(1) of the Ordinance.
5. The Commission issues this infringement notice (“**Infringement Notice**”) pursuant to section 67(2) of the Ordinance based on the contravention described in this Infringement Notice to CAPL, being the owner and the manager of the Hotel.
6. The structure of this Infringement Notice is as follows:
- (a) Section 1 sets out the introduction and summary of the Commission’s investigation and findings;
 - (b) Section 2 sets out the facts relied upon by the Commission and the conduct which the Commission believes to have contravened the First Conduct Rule;
 - (c) Section 3 sets out the relevant legal framework pertaining to the First Conduct Rule and the issuing of an infringement notice under the Ordinance;
 - (d) Section 4 sets out the Commission’s basis for issuing this Infringement Notice; and
 - (e) Section 5 sets out the requirements of this Infringement Notice and how and when the addressees should respond to this Infringement Notice.

7. The references to the evidence or other materials that are relied upon by the Commission are identified in the endnotes to this Infringement Notice. Confidential information appearing in the endnotes will be redacted in any published version of this Infringement Notice.

2. THE RELEVANT FACTS

2.1 The Parties

8. At all material times:

- (a) Gray Line operated tourist service counters at different ports of entry to Hong Kong as well as in a number of hotels in Hong Kong;
- (b) Tink Labs was a technology company primarily engaged in the licensing, installation and provision of the Handy Devices to hotels in Hong Kong for use by its guests. In relation to the Handy Devices, Tink Labs' business model was as follows:
 - (1) Upon entering into a licensing agreement with a hotel, Tink Labs would provide the Handy Devices customised to the hotel's needs and would arrange to install the same in its guest rooms;
 - (2) Through using the Handy Devices, hotel guests would be able to access a variety of services, including free internet, free IDD telephone calls, the ability to order in-room hotel services, access to city guides and the purchase of tickets for tours and attractions ("**Ticketing Function**"); and
 - (3) Apart from licensing fees, Tink Labs also profited from paid advertising displayed on the Handy Devices and from the Ticketing Function.
- (c) CAPL was, and still is, a limited liability company incorporated in Hong Kong and the owner of the Hotel's premises as well as the manager of the Hotel.

2.2 The Subject Arrangement

9. As businesses that were engaged in the sale of tourist attractions and transportation

tickets, Gray Line and Tink Labs were competing undertakings in Hong Kong.

10. Gray Line has been selling its tickets via a physical ticketing counter at the Hotel since sometime in 2008.ⁱ During the material time of the contravention, Gray Line was permitted to sell its tickets at the ticketing counter in the Hotel in exchange for a monthly rental fee pursuant to an Agreement dated 31 October 2014.ⁱⁱ This rental agreement expired on 31 October 2016. Following the expiration of the rental agreement, Gray Line’s tickets were sold at the concierge of the Hotel pursuant to a consignment agreement between the Hotel and Gray Line.ⁱⁱⁱ
11. Tink Labs on the other hand began selling its tourist attractions and transportation tickets from the premises of the Hotel on 1 March 2016 pursuant to a licensing agreement dated 3 March 2015 entered into between a company known as Bestown Property Limited trading as The Royal Pacific Hotel & Towers for and on behalf of the Hotel and Tink Labs (“**Tink Labs Licensing Agreement**”).^{iv} Pursuant to the Tink Labs Licensing Agreement, one Handy Device was installed in each of the 613 rooms, and around 30 spare devices and 5 spare SIM cards were provided by Tink Labs to the Hotel.^v
12. From or around May 2016, Gray Line and Tink Labs were both selling the following tickets from the premises of the Hotel:
 - (a) Hong Kong Disneyland;
 - (b) Ocean Park Hong Kong;
 - (c) Peak Tram;
 - (d) Ngong Ping 360;
 - (e) Madame Tussauds Hong Kong;
 - (f) Airport Express; and
 - (g) Trick Eyes 3D(collectively the “**Relevant Tickets**”).

13. On 11 May 2016, dissatisfied with the fact that Tink Labs was selling its tickets (including the Relevant Tickets) at the Hotel at a cheaper price than Gray Line, Gray Line made a complaint to the Hotel through email.^{vi}
14. In that email, Gray Line noted that installing the Handy Devices in the Hotel and allowing them to offer sales of theme park, attractions tickets and sightseeing tours would “*cause a lot of damage*” to their business relationship and hotel image. Further, Gray Line indicated that the Handy Devices were selling the theme park tickets below the published prices of tickets sold by the theme parks, which would raise complaints from hotel guests. Gray Line, therefore, requested the Hotel to instruct Tink Labs to stop selling theme park tickets and sightseeing tours to hotel guests.^{vii}
15. Shortly after the receipt of the email from Gary Line, an employee of the Hotel spoke to the representative of Tink Labs on telephone and received a reply from Tink Labs that it had encountered the same problem in other hotels and what Tink Labs did was to increase its related prices to match exactly what Gray Line was offering to the hotel guests.^{viii}
16. By an email dated 19 May 2016 from the Hotel to Gray Line, the Hotel declined Gray Line’s request for the Hotel to ask Tink Labs to stop selling attraction tickets (including the Relevant Tickets) at the Hotel based on its concerns over the difference in prices at which attraction tickets (including the Relevant Tickets) were sold on the Handy Devices by Tink Labs and at which attraction tickets (including the Relevant Tickets) were sold by Gray Line at the ticketing counter at the Hotel.
17. Shortly after the receipt of the Hotel’s email on 19 May 2016 and on the same day, in an email from Gray Line to the Hotel, Gray Line insisted that the installation of the Handy Devices in the Hotel had greatly hurt their business and proposed an urgent meeting to discuss, which meeting took place on 20 May 2016.^{ix}
18. As a follow up to the meeting on 20 May 2016, Gray Line emailed the Hotel on 30 May 2016 further highlighting the problems with Tink Labs selling theme park tickets and sightseeing tours to hotel guests through the Handy Devices.^x

19. By an email dated 15 September 2016, Gray Line informed the Hotel of the actions taken by other hotels in relation to the Handy Devices. According to the email, some of the other hotels had successfully asked Tink Labs to remove the Ticketing Function.^{xi}
20. In between 15 to 21 September 2016, an employee of the Hotel had a discussion with a representative of Tink Labs during which it was agreed that Tink Labs would adjust the selling prices of theme park tickets and attractions tickets sold on the Handy Devices available at the Hotel’s premises to match the published prices of tickets sold by the relevant theme parks and attractions, which were the same prices as what Gray Line was selling its tickets at the Hotel’s premises.^{xii}
21. By email dated 21 September 2016, Tink Labs asked the Hotel to send “*all the ticket price*” so that it could ask “*the ticketing team to update the prices*”.^{xiii} The Hotel then informed Gray Line of the action to be taken by Tink Labs and, in turn, asked Gray Line to send “*all the ticket price*” to the Hotel.^{xiv}
22. On 22 September 2016, Gray Line sent the theme parks’ published prices tickets to the Hotel who acknowledged receipt and stated that it would forward the prices to Tink Labs.^{xv} The prices were eventually passed onto Tink Labs by the Hotel on 25 September 2016.^{xvi}
23. By 26 September 2016 latest, Tink Labs had in order to give effect to the Subject Arrangement amended the prices of the Relevant Tickets that were being sold *via* the Handy Devices available at the Hotel to match those that were being sold by Gray Line at the Hotel.^{xvii}
24. On 31 October 2016, Gray Line stopped selling its attraction and transportation tickets at the Hotel’s premises after the expiry of its rental agreement to operate a ticketing counter at the Hotel. Instead, from 31 October 2016 onwards, Gray Line’s tickets were sold *via* the concierge of the Hotel pursuant to a consignment agreement between Gray Line and the Hotel.^{xviii}
25. The Subject Arrangement was in effect until May 2017 when Tink Labs ceased complying with the same.

3. THE RELEVANT LEGAL FRAMEWORK

3.1 The First Conduct Rule

26. Section 6(1) of the Ordinance (First Conduct Rule) provides, among other matters, that an undertaking must not make or give effect to an agreement or engage in a concerted practice² where the object or effect of the agreement or concerted practice is to prevent, restrict, or distort competition in Hong Kong.³
27. Of relevance to this Infringement Notice, the First Conduct Rule is contravened where:
- (a) Undertakings;
 - (b) Make or give effect to an agreement; and
 - (c) The agreement has the object of harming competition in Hong Kong.

“Undertakings”

28. An “undertaking” is defined in section 2(1) of the Ordinance as meaning “any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity, and includes a natural person engaged in economic activity”.
29. The key question in determining whether a particular entity is an “undertaking” for the purpose of the Ordinance is whether that entity engages in activity which is economic in nature. In this regard, as soon as goods or services are offered on a market, whether or not for profit, that activity will be considered as being “economic” in nature.⁴

² For ease of reference, in line with section 2(1) of the Ordinance, the term “agreement” will be used to denote both “agreements” and “concerted practices”.

³ For ease of reference, the term “to harm competition” or “harming competition” will be used in this Infringement Notice instead of the statutory language of “prevent, restrict, or distort competition”.

⁴ Commission’s Guideline to the First Conduct Rule at §2.3.

30. In competition law and consistent with section 2(1) of the Ordinance, the key organising concept is that of the single economic unit, even if in law that economic unit consists of several persons, natural or legal. Where one of the entities engages in conduct that harms competition, it is the single economic unit that contravenes the Ordinance.⁵
31. While the First Conduct Rule prohibits *undertakings* from entering into anti-competitive agreements, enforcement actions under the Ordinance may only be addressed to *persons* who have contravened or have been involved in a contravention of a competition rule. Accordingly, where the Commission wishes to enforce the competition rules (whether it be by way of proceedings before the Tribunal or the issuing of an Infringement Notice), the contravention must be imputed to one or more persons against whom legal proceedings may be instituted and on whom orders, including an order to pay a pecuniary penalty may be imposed.⁶

“Agreement”

32. As defined in section 2(1) of the Ordinance, an “agreement” for the purpose of the Ordinance refers to *“any agreement, arrangement, understanding, promise or undertaking, whether express or implied, written or oral, and whether or not enforceable or intended to be enforceable by legal proceedings.”*
33. An agreement that contravenes the First Conduct Rule is not restricted to an agreement between competitors. The First Conduct Rule may be contravened where there is a trilateral or multilateral agreement between two or more commercial customers and their common supplier.⁷ In this context, it does not matter whether or not the customers themselves ever had any direct contact. This is because an “agreement” for the purpose of competition law may come about as a result of indirect communications between two undertakings through a third party (such as another undertaking).⁸

⁵ *Competition Commission v W. Hing Construction Co. Ltd (No. 2)* [2019] 3 HKLRD 46 (“**W. Hing**”) at §302 citing Case C-97/08 P *Akzo Nobel v Commission of the European Communities* [2009] 5 CMLR 23 (“**Akzo**”) at [55] with approval.

⁶ **W. Hing** (*supra*) at §303.

⁷ *Competition Commission v Nutanix Hong Kong Ltd & Ors (No. 3)* (“**Nutanix**”) [2019] 3 HKC 307 at §§43-44 citing *Argos Ltd and Littlewoods Ltd v Office of Fair Trading* [2006] EWCA Civ 1318 (“**Argos**”).

⁸ *Ibid.*

“Object” of Harming Competition

34. An agreement may have the “object” of harming competition if the underlying coordination between the undertakings reveals, in itself, a sufficient degree of harm to competition.⁹ Where an agreement is held to have the object of harming competition it is unnecessary to consider the effects of that agreement before finding that the First Conduct Rule has been contravened.¹⁰
35. Any agreement between competitors to fix the prices of goods or services they will charge to their consumers will generally be regarded as having the object of harming competition.¹¹
36. In addition to being regarded as being anti-competitive by object, price-fixing also falls within the definition of “serious anti-competitive conduct” in section 2 of the Ordinance.

3.2 Infringement Notices

37. Under section 67(1) of the Ordinance, the Commission may issue an infringement notice to a person where:
- (a) It has reasonable cause to believe that a contravention of the First Conduct Rule has occurred that involves serious anti-competitive conduct; and
 - (b) It has not yet brought proceedings in the Competition Tribunal (“**Tribunal**”) in respect of the contravention.
38. In these circumstances, the Commission may issue an infringement notice, instead of bringing proceedings in the Tribunal in the first instance, to a person offering not to bring those proceedings on the condition that that person makes a commitment to comply

⁹ W. Hing (*supra*) at §§105-106.

¹⁰ See for example, **W. Hing** (*supra*) at §142 in the context of price-fixing where the Tribunal agreed with the Commission’s submissions that “it is generally regarded as unnecessary for proof of an infringement of competition law to show that the price-fixing agreement has any influence on the actual selling price achieved.”

¹¹ For example, in **W. Hing** (*supra*), an agreement between decoration contractors to adopt the same “package prices” for standardised renovation packages in their respective promotion flyers was held as having the object of harming competition.

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with the requirements of the notice: section 67(2) of the Ordinance. The requirements of the notice may include, but are not limited to, a requirement to refrain from or take specified action and a requirement to admit a contravention of the relevant conduct rule: section 67(3) of the Ordinance.

39. Where more than one person constitutes the undertaking that the Commission has a reasonable cause to believe has contravened the First Conduct Rule, the Commission may issue an infringement notice to any or all of the persons it proposes to bring proceedings against for the undertaking's contravention of the First Conduct Rule.
40. Where a person makes a commitment to comply with a requirement in an infringement notice, the commitment is specifically enforceable. Where the Commission has reasonable grounds to suspect that a person has failed to comply with any commitment to comply with an infringement notice, the Commission may apply to the Tribunal for an order for specific performance of the commitment: section 63(2)(a) of the Ordinance.
41. As specified in section 68 of the Ordinance, a person is not *obliged* to make a commitment to comply with the requirements of an infringement notice. Where a person does not do so, the Commission may bring proceedings against that person in the Tribunal and seek a number of orders. A copy of section 68 of the Ordinance is enclosed with this Infringement Notice.

4. THE COMMISSION'S BASIS FOR ISSUING AN INFRINGEMENT NOTICE

42. Based on the facts set out in Section 2 above, the Commission has reasonable cause to believe that the Subject Arrangement described in Section 2 of this Infringement Notice constitutes an agreement with the object of harming competition in Hong Kong between:
 - (a) Gray Line as an undertaking that was active in the market for the sale and purchase of the Relevant Tickets;
 - (b) Tink Labs as another undertaking that was active in the market for the sale and purchase of the Relevant Tickets; and
 - (c) CAPL as an undertaking that, despite not being active in the same market as Gray Line and Tink Labs, had facilitated the cartel between Gray Line and Tink Labs.

43. In particular:
- (a) As competitors in the same market, Gray Line and Tink Labs should have independently determined the prices they would charge for the sale of the Relevant Tickets;
 - (b) The Subject Arrangement described in Section 2 above constitutes an agreement to fix the prices of the Relevant Tickets sold by Gray Line and Tink Labs, which was facilitated by the Hotel. Specifically, Tink Labs had agreed to fix the prices of the Relevant Tickets by adopting Gray Line’s prices in order to address Gray Line’s complaint to the Hotel.
 - (c) As a result of the Subject Arrangement, Tink Labs did, to the knowledge of Gray Line and the Hotel, increase the prices of the Relevant Tickets to the same as that of Gray Line, during the material time of the contravention.
44. The Subject Arrangement is conduct which falls within the definition of serious anticompetitive conduct under section 2(2) of the Ordinance.
45. At all material times, CAPL was and is the owner and the manager of the Hotel. Accordingly, the Commission considers that CAPL is liable for the Hotel’s contravention of the First Conduct Rule.

5. RESPONDING TO THIS INFRINGEMENT NOTICE

5.1 Requirements of this Infringement Notice

46. The requirements of this Infringement Notice are set out in the commitment at Annex (1) to the notice. Should CAPL make a commitment in the form set out in Annex (1) within the compliance period, the Commission will not institute proceedings against CAPL in respect of the Subject Arrangement.

5.2 Notification period

47. CAPL must notify the Commission in writing whether or not it proposes to comply with the requirements of this Infringement Notice set out in Annex (1) no later than by 4:00pm on 1 February 2021.

5.3 Compliance period

48. If CAPL notifies the Commission that it proposes to comply with the requirements of this Infringement Notice within the notification period, it must then submit a commitment to the Commission in the form set out in Annex (1) no later than by 4:00 pm on 4 February 2021.
49. In accordance with section 74 of the Ordinance, CAPL may apply in writing to the Commission for an extension of the compliance period, before that period has expired. The Commission may extend the period if it considers there is a good reason for doing so.

5.4 Publication of the infringement notice and commitment

50. Where a commitment to comply with the requirements of this Infringement Notice is made within the compliance period, the Commission may publish the infringement notice and the commitment (other than the confidential information appearing in the endnotes being redacted in accordance with paragraph 7 of this Infringement Notice) provided on its website, in accordance with sections 72(2), 77 and 78 of the Ordinance.

* * *

Issued 26 January 2021.

[Signed]

Samuel CHAN Ka-yan
for and on behalf of the
Competition Commission

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

Date:

Name:

Position:

CONFIDENTIAL ENDNOTES TO THE INFRINGEMENT NOTICE

(Confidential information is highlighted in yellow and will be redacted in accordance with paragraph 7 of the Infringement Notice)

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- ⁱ Paragraph 3 of CIS of [Hotel representative] dated 13 December 2018 (“[Hotel representative]’s CIS”).
- ⁱⁱ Letter from City Garden Hotel to Gray Line Tours of Hong Kong Limited (“**Gray Line**”) dated 31 October 2014.
- ⁱⁱⁱ Email from [Gray Line representative] to [Gray Line representative] dated 27 October 2016 together with attachments.
- ^{iv} License Agreement dated 3 March 2015 entered into between Bestown Property Limited trading as The Royal Pacific Hotel & Towers for and on behalf of the Hotel and Tink Labs Limited (“**Tink Labs**”).
- ^v Paragraph 10 of [Hotel representative]’s CIS.
- ^{vi} Paragraph 15 of [Hotel representative]’s CIS, paragraph 9 of the CIS of [Hotel representative] dated 30 January 2019 (“[Hotel representative]’s CIS”) and paragraph 13 of CIS of [Hotel representative] dated 28 January 2019.
- ^{vii} Email from [Gray Line representative] of Gray Line to [Hotel representative] dated 11 May 2016 at 3:46pm.
- ^{viii} Email from [Hotel representative] of the Hotel to [Hotel representative] dated 16 May 2016 at 8:37am; paragraph 33 of CIS of [Hotel representative] dated 14 January 2019.
- ^{ix} Email from [Gray Line representative] to [Hotel representative] dated 19 May 2016 at 6:57pm.
- ^x Email from [Gray Line representative] to [Hotel representative] dated 30 May 2016 at 3:04pm.
- ^{xi} Email from [Gray Line representative] to [Hotel representative] dated 15 September 2016 at 11:32am.
- ^{xii} Email exchanges between [Hotel representative] and [Tink Labs representative] on 21 September 2016.
- ^{xiii} Email from [Tink Labs representative] to [Hotel representative] dated 21 September 2016 at 6:05pm.
- ^{xiv} Email from [Hotel representative] to [Gray Line representative] dated 21 September 2016 at 6:18pm.
- ^{xv} Email from [Gray Line representative] of Gray Line to [Hotel representative] dated 22 September 2016 at 6:11pm.
- ^{xvi} Email from [Hotel representative] to [Tink Labs representative] dated 25 September 2016 at 10:53am.
- ^{xvii} Paragraph 76 of [Tink Labs representative]’s CIS dated 23 August 2019.
- ^{xviii} Paragraph 52 of [Hotel representative]’s CIS.