

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: **Harilela Hotels 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 (“**the 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 Holiday Inn Golden Mile (“**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) Harilela Hotels Limited (“HHL”), owner of the Hotel, together with Holiday Inn Crowne Plaza (Hong Kong), Inc. (“HICP”), manager of the Hotel, had engaged in the economic activity of providing hotel services in the name of “Holiday Inn Golden Mile” (i.e. the Hotel). The Hotel was, for the purpose of this Infringement Notice and for the particular contravention during the period specified below, an undertaking that is comprised of HHL and HICP; and
 - (c) From around August 2016 to May 2017, the Hotel, together with another undertaking, Imperial Tours Limited (“ITL”)) had acted as facilitators of the Subject Arrangement and thereby gave effect to the Subject Arrangement with Gray Line and Tink Labs.
4. This 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 HHL as the owner 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) HHL was, and still is, (1) a limited liability company incorporated in Bermuda and registered in Hong Kong under Part XI of the Companies Ordinance; and (2) the owner of the Hotel;

- (d) HICP was, and still is, (1) a company incorporated in Tennessee, United States of America; (2) engaged in the provision of hotel management services in Hong Kong; and (3) the manager of the Hotel pursuant to an International Management Agreement dated 23 January 1970 between the predecessors of HHL and HICP respectively (as extended pursuant to a letter dated 28 October 2014 from HICP to HHL) (“**IMA**”);ⁱ and
- (e) ITL, was, and still is, (1) a limited liability company incorporated in Hong Kong; and (2) a company that is also engaged in the provision of travel related services in Hong Kong.

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. Pursuant to various licensing agreements that were first entered into from as early as the 1990s, HHL had, on behalf of the Hotel, permitted ITL to set up a tour counter in the lobby of the Hotel for providing service on tour, sightseeing and airline bookings to guests. This right was in turn assigned by ITL to Gray Line pursuant to various licensing agreements that were entered into from as early as 1993. From this date, Gray Line sold tourist attractions and transportation tickets from the premises of the Hotel.
11. Tink Labs on the other hand began selling its tourist attractions and transportation tickets from the premises of the Hotel on 17 June 2015 pursuant to a licensing agreement dated 23 April 2015 that was concluded with HHL “trading in the name of” the Hotel (“**Tink Labs Licensing Agreement**”). Under the Tink Labs Licensing Agreement, Tink Labs had installed more than two hundred Handy Devices at the Hotel with guests being able to purchase tourist attractions and transportation tickets *via* the Ticketing Function.
12. From or around June 2015, 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) The Peak Tram;
- (d) Ngong Ping 360 Cable Car;
- (e) Big Bus;
- (f) Madame Tussauds Hong Kong;
- (g) Disney Themed Magical World (formerly known as Hong Kong 3D Museum); and
- (h) Hong Kong Airport Express

(collectively the “**Relevant Tickets**”).

13. On 14 March 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’s sales price, Gray Line made a complaint to ITL through email.ⁱⁱ
14. In that email, Gray Line noted that as a result of Tink Labs’ *“deeply discounted theme park tickets”*, Gray Line had suffered a *“significant drop”* in its tour and ticket sales from the hotel counters. Citing its *“dissatisfaction on the damaging impact”* of Tink Lab’s competition,ⁱⁱⁱ Gray Line requested ITL to urge the Hotel to stop Tink Labs from continuing to sell their tickets *via* the Handy Device.^{iv}
15. Upon receipt of Gray Line’s complaint, ITL forwarded the complaint to HHL for their consideration.
16. Following a series of communications between Gray Line, ITL and the Hotel to address Gray Line’s complaint, representatives of HHL, Gray Line and ITL met on 6 July 2016 at ITL’s office (located outside of the Hotel) and discussed, amongst other things, the alleged potential confusion caused by the differential pricing of the Relevant Tickets sold by Gray Line and Tink Labs.
17. Following the meeting, on 9 July 2016, Gray Line sent an email to ITL:
 - (a) Stressing that it was *“necessary to align the pricing to avoid misunderstandings”*;^v

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- (b) Providing a comparison between the differential pricing between Gray Line and Tink Labs in a price comparison table; and
 - (c) Expressly proposing that Tink Labs should price match with Gray Line by adopting the official retail prices.
- 18. On 25 July 2016, Gray Line issued a letter to ITL to officially request the Hotel to request Tink Labs to, amongst other things, price match. The said letter was forwarded by ITL to the Hotel on 26 July 2016 for its attention.^{vi}
- 19. On or around 22 August 2016, the Hotel approached Tink Labs to relay the concerns of Gray Line and ITL over the sale of the Relevant Tickets on the Handy Devices.
- 20. Thereafter, following further communications between Gray Line and ITL, ITL and the Hotel, and the Hotel and Tink Labs, in or around late August 2016 Gray Line and Tink Labs agreed on the Subject Arrangement through the facilitation of ITL and the Hotel. In particular, in order to address Gray Line’s complaints, Tink Labs agreed, among other things, to adjust the selling prices of the Relevant Tickets to match the prices which Gray Line was charging.
- 21. Pursuant to the Subject Arrangement:
 - (a) By email on 26 August 2016, the Hotel forwarded the prevailing Gray Line prices of the Relevant Tickets to Tink Labs (which were earlier provided from Gray Line to ITL, and then from ITL to the Hotel) so as to allow Tink Labs to match their prices with those of Gray Line;^{vii}
 - (b) Tink Labs subsequently increased the prices of the Relevant Tickets on the Ticketing Function to match Gray Line’s prices; and
 - (c) By emails dated 29 August 2016 and 1 September 2016, Tink Labs confirmed with the Hotel that it had increased all the mentioned ticket prices as per the Hotel’s request.^{viii}
- 22. The fact that Tink Labs had, pursuant to the Subject Arrangement, matched its prices with Gray Line’s and had removed their tour sales on the Handy Devices was at all

material times made known to ITL and Gray Line.

2.3 Subsequent monitoring of Tink Labs’ prices

23. Following the entering into of the Subject Arrangement, Tink Labs’ pricing of the Relevant Tickets was monitored by Gray Line and the Hotel. Occasionally, Tink Labs would be asked by the Hotel to confirm whether it had discounted its prices, and would be required to adjust its prices to match Gray Line’s prices in the event that Tink Labs’ prices were indeed lower. In some instances, these requests were prompted by Gray Line while in other instances, they would be initiated by the Hotel. These include:
- (a) On 26 December 2016, the Hotel requested Tink Labs to check whether prices had been discounted, to which Tink Labs replied on 28 December 2016 confirming that it had not discounted its prices;^{ix}
 - (b) On 16 March 2017, Gray Line requested the Hotel to check whether Tink Labs had discounted its prices;^x on the same day, upon discovering that Tink Labs’ prices did differ from Gray Line’s, the Hotel requested Tink Labs to address the differential pricing;^{xi} the Hotel had also explicitly reconfirmed with Tink Labs that it wished for it to price match “*as per our previous agreement*”;
 - (c) On 20 March 2017, Tink Labs confirmed that the prices for the Relevant Tickets had been revised;^{xii}
 - (d) On 14 and 15 September 2017, the Hotel requested Tink Labs to remove the discounted prices offered on some of the Relevant Tickets as well as some sightseeing tours;^{xiii} and
 - (e) On 19 September 2017, the Hotel provided Tink Labs with a list of discounted prices which it found on the Ticketing Function and requested Tink Labs to amend those prices to match those of Gray Line.^{xiv}
24. On 20 September 2017, Tink Labs notified the Hotel by email that it would no longer price match with Gray Line as this might violate the competition law.^{xv}

25. Despite Tink Lab’s notification, Gray Line had continued to give effect to the Subject Arrangement by monitoring the price of the Relevant Tickets sold by Tink Labs on the Handy Devices as follows:
- (a) Gray Line had requested its staff at its service counters at the Hotel to monitor the “sales status” on the Handy Devices on the first day of every month;^{xvi}
 - (b) On 5 December 2017, Gray Line emailed and asked its own service counter at the Hotel to “check” the price at which the Relevant Tickets were sold on the Handy Devices;^{xvii}
 - (c) On 2 January 2018, an email with subject “Handyphone report” attaching a document entitled “Handy Phone Monthly check” was sent to Gray Line’s tour counter of the Hotel, requesting information on the price of the Relevant Tickets sold on the Handy Devices^{xviii}.
26. Furthermore, by an email dated 23 November 2017 with subject “Cooperation with Grayline and Imperial Tour”, Gray Line further requested ITL to adhere to a “mutual agreement” that all travel related services be handled by Gray Line’s tour counter at the Hotel, with reference to “the situation where hotel guests can purchase theme park tickets directly inside the room”, i.e. through the Handy Devices.^{xix}

3. THE RELEVANT LEGAL FRAMEWORK

3.1 The First Conduct Rule

27. Section 6(1) of the Ordinance (First Conduct Rule) provides, amongst 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

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”.

28. 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”

29. 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”.
30. 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
31. 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
32. As an undertaking may comprise of more than one entity, where an undertaking contravenes the competition rules (e.g. where one of the entities comprising of the undertaking enters into an anti-competitive agreement), that contravening conduct may be attributable to other entities on the basis that they are comprised within the same undertaking.⁶

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

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 §304.

33. By way of illustration:

- (a) In cases involving a parent and subsidiary company, when determining whether the parent and subsidiary may be considered to form part of the same undertaking, the relevant question is whether the subsidiary determined independently its own conduct on the market or whether it was carrying out the instructions of the parent company having regard especially to the economic, organisational and legal links between the parent and subsidiary. Thus, where the parent exercises “decisive influence” over the relevant activities and policies of the subsidiary, both the parent and subsidiary may be regarded as a single economic unit and part of the same undertaking.⁷ Similarly, where two companies are under the decisive influence of a third company, the three companies may together be regarded as being part of the same undertaking;⁸
- (b) Where, in the context of a principal and agent relationship, there is unity in their conduct on the market as one and the same undertaking, both the principal and agent may be regarded as being part of the same undertaking for the purpose of establishing a contravention of competition law. This may arise where the agent is entrusted to engage in the economic activity in the principal’s name and is perceived by third parties that they are, in fact, a single economic entity;⁹
- (c) In cases concerning hotel management, to assess whether each hotel owner/master lessee forms the same undertaking by reason of a principal and agent relationship with the hotel manager engaged to manage/operate its hotel, one of the relevant considerations is whether the agent (i.e. the manager of the hotel) takes on any financial or economic risk;¹⁰ and
- (d) In the context a sub-contracting relationship, where the principal and the sub-

⁷ **W. Hing** (*supra*) at §305, citing **Akzo** (*supra*) at §60.

⁸ Commission’s Guidelines to the First Conduct Rule at §2.9.

⁹ See for example, Case T-66 *Minoan Lines SA v Commission of the European Communities* [2005] CMLR 32 the relevant principle of which is cited with approval in **W. Hing** (*supra*) at §307.

¹⁰ See for example, Infringement Decision against the Exchange of Commercially Sensitive Information between Competing Hotels in Case CCCS 700/002/14 issued by Competition and Consumer Commission of Singapore dated 30 January 2019 at §400 and §452.

contractor were *both* necessarily engaged in the economic activity which was carried out in the principal’s name, the relevant undertaking may be regarded as being comprised of *both* the principal and the sub-contractor such that they both may be liable for contravening competition law.¹¹

34. 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.¹²

“Agreement”

35. 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.*”
36. 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.¹³ 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).¹⁴

¹¹ **W. Hing** (*supra*) at §§317-323.

¹² **W. Hing** (*supra*) at §303.

¹³ *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**”).

¹⁴ *Ibid.*

“Object” of Harming Competition

37. 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.¹⁵ 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.¹⁶
38. 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.¹⁷
39. 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

40. 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.
41. 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

¹⁵ W. Hing (*supra*) at §§105-106.

¹⁶ 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.*”

¹⁷ 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.

42. 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.
43. 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.
44. 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

45. Based on the facts as 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

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- (c) ITL and the Hotel (consisting of HHL and HICP) as undertakings 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.

46. 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 ITL and 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 ITL and the Hotel.
- (c) As a result of the Subject Arrangement, Tink Labs did, to the knowledge of Gray Line, ITL and the Hotel, increase the prices of the Relevant Tickets to the same as that of Gray Line, from July 2016 until September 2017.

47. The Subject Arrangement is conduct which falls within the definition of ‘serious anticompetitive conduct’ under section 2(2) of the Ordinance.

48. As for the liability of HHL and HICP, the Commission considers that they, for the purpose of this Infringement Notice, were part of the same undertaking (i.e. the Hotel) and are therefore jointly and severally liable for the Hotel’s contravention of the First Conduct Rule. This is especially since:

- (a) At all material times, the Hotel was owned by HHL and managed by HICP. While nearly all the personnel working at the Hotel is employed by HHL (instead of HICP), pursuant to the IMA, HICP was responsible for the hiring, supervising, directing and discharging all personnel working at the premises of the Hotel and that HHL may not interfere with or give any orders or instructions to these personnel;^{xx}

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- (b) The representatives of the Hotel that were, at all material times, responsible for liaising with Gray Line, ITL, and Tink Labs in relation to the Subject Arrangement and who were responsible for the subsequent monitoring of Tink Labs’ prices were required to report (directly or through their immediate supervisors) to the senior management within HICP/HHL;^{xxi}
- (c) Under the IMA, HHL agrees to hold HICP harmless from damage or injuries to person or property by reason of any cause and to reimburse HICP upon demand for any money which HICP is required to pay out for any reason. Further, HHL also agrees to defend at its sole expense, any claim, action or proceeding brought against HICP or HHL jointly or severally arising out of or connected with any of the provisions contained in the IMA. In these circumstances, HICP does not bear any financial risks associated with the management of the Hotel;^{xxii} and
- (d) The Hotel was, at all material times advertised and held out as being one distinct entity (“Holiday Inn Golden Mile”) such that patrons of the Hotel would not be able to perceive a distinction between the Hotel’s staff / representatives that were employed by HHL or HICP.

5. RESPONDING TO THIS INFRINGEMENT NOTICE

5.1 Requirements of this Infringement Notice

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

50. Where only one or some of addressees to this notice makes a commitment, the Commission will not institute proceedings against those addressees.

5.2 Notification period

51. HHL 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 4:00 pm on 1 February 2021.

5.3 Compliance period

52. If HHL 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.

53. In accordance with section 74 of the Ordinance, HHL 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

54. 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 reacted 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
HARILELA HOTELS LIMITED**

Whereas:

- A. On 26 January 2021, the Competition Commission (“**Commission**”) issued an Infringement Notice to Harilela Hotels 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 attraction and transportation services sold at the premises of Holiday Inn Golden Mile (“**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
 - (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.

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- E. The term “**Staff**” shall, unless the context otherwise requires, mean all directors and employees employed by the Company to work at, or in relation to, the Hotel during 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 Company’s Staff at the grade of “supervisors” or above, 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 name 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;
 - (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 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;
 - (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:

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- (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;
 - (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.

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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:

Harilela Hotels 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)

ⁱ International Management Agreement dated 23 January 1970 between Hotel Holdings Ltd and Holiday Inns, Inc. (as extended pursuant to a letter dated 28 October 2014 from Holiday Inn Crowne Plaza (Hong Kong) Inc. (“HICP”) to Harilela Hotels Limited (“HHL”).

ⁱⁱ Email from [Gray Line representative] of Gray Line to [ITL representative] of Imperial Tours Limited (“[ITL representative]”) dated 14 March 2016 at 5:10pm.

ⁱⁱⁱ Paragraph 6 of CIS of [Hotel representative] (“[Hotel representative]”) dated 11 December 2018 (“[Hotel representative]’s CIS”).

^{iv} Paragraph 6 of [Hotel representative]’s CIS.

^v Email from [Gray Line representative] of Gray Line (“[Gray Line representative]”) to [ITL representative] dated 9 July 2016 at 1:17pm.

^{vi} Letter dated 25 July 2016 addressed to [ITL representative] from Gray Line.

^{vii} Email from [Hotel representative] of HHL (“[Hotel representative]”) to [Tink Labs representative] (“[Tink Labs representative]”) and [Tink Labs representative] (“[Tink Labs representative]”) of Tink Labs dated 26 August 2016 at 8:55pm.

^{viii} Email from [Tink Labs representative] to [Hotel representative] dated 29 August 2016 at 11:44 am; Email from [Tink Labs representative] to [Hotel representative] dated 1 September 2016 at 12:56pm.

^{ix} Email from [Hotel representative] to [Tink Labs representative] dated 26 December 2016 at 4:00pm; Email from [Tink Labs representative] to [Hotel representative] dated 28 December 2016 at 11:35am

^x Email from [Gray Line representative] of Gray Line (“[Gray Line representative]”) to [Hotel representative] dated 16 March 2017 at 5:46pm.

^{xi} Email from [Gray Line representative] to [Hotel representative] dated 16 March 2017 at 5:46pm; Email from [Hotel representative] to [Tink Labs representative] dated 16 March 2017 at 7:31pm.

^{xii} Email from [Tink Labs representative] to [Hotel representative] dated 20 March 2017 at 12:59pm.

^{xiii} Emails from [Hotel representative] to [Tink Labs representative] of Tink Labs (“[Tink Labs representative]”) dated 14 September 2017 at 2:24pm and of 15 September 2017 at 6:29pm.

^{xiv} Email from [Hotel representative] to [Tink Labs representative] and [Tink Labs representative] dated 19 September 2017 at 3:52pm.

^{xv} Email from [Tink Labs representative] to [Hotel representative] dated 20 September 2017 at 11:57am.

^{xvi} Email from [Gray Line representative] to ‘all counter’ dated 29 November 2017 at 6:23pm.

^{xvii} Email from [Gray Line representative] of Gray Line to Gray Line’s service counter at Holiday Inn Golden Mile dated 5 December 2017 at 9:08am.

^{xviii} Email from [Gray Line representative] to Gray Line’s service counter at Holiday Inn Golden Mile dated 2 January 2018 at 8:02am.

^{xix} Email from [Gray Line representative] to [ITL representative] dated 23 November 2017 at 5:45pm.

^{xx} IMA Article V.

^{xxi} Paragraph 2 [Hotel representative]’s CIS.

^{xxii} IMA Article VIII.