

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: **The Hongkong Hotel Limited** **The Marco Polo Hotel (Hong Kong) Limited**
 [Address of legal representative] [Address of legal representative]

The Prince Hotel Limited **Wharf Hotels Management Limited**
 [Address of legal representative] [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 following hotels:

(1) The Marco Polo Hongkong Hotel;

(2) The Gateway Hotel; and

(3) The Prince Hotel.

(collectively referred to as the “**Hotels**”).

2. In particular, the Commission was investigating whether or not Tink Labs and Gray Line had, together with the Hotels acting as facilitators,¹ made and given effect to an agreement or had engaged in the concerted practice of fixing and controlling the

¹ For the purpose of this Infringement Notice, the characterisation of “facilitator” / “facilitating [the cartel]” is used to refer to the fact that the Hotels 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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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 Hotels (“**Subject Arrangement**”).

3. Following the Commission’s investigation, the Commission has reasonable cause to believe that:
 - (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) The Hotels are part of a single undertaking known as “Marco Polo Hotels - Hong Kong” (“**Marco Polo Hotels**”). This undertaking comprises the companies that own the Hotels’ premises and the Hotels’ management company, Wharf Hotels Management Limited (“**WHML**”); and
 - (c) From around July 2016 to May 2017, Marco Polo Hotels had acted as facilitators of 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 in 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:
 - (a) The Hongkong Hotel Limited (“**HKH**”) - the owner of The Marco Polo Hongkong Hotel;
 - (b) The Marco Polo Hotel (Hong Kong) Limited (“**MPHKL**”) - the owner of The Gateway Hotel;
 - (c) The Prince Hotel Limited (“**PHL**”) - the owner of The Prince Hotel; and
 - (d) WHML.

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;

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- (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) The Marco Polo Hongkong Hotel was, and still is, wholly owned by HKH;
- (d) The Gateway Hotel was, and still is, wholly owned by MPHKL;
- (e) The Prince Hotel was, and still is, wholly owned by PHL;
- (f) Pursuant to separate Operation Agreements between each of HKH, MPHKL, PHL on the one hand, and WHML on the other handⁱ (collectively referred to as the “**Operation Agreements**”), the Hotels were operated and managed by WHML, known, up until 19 April 2017, as “Marco Polo Hotels Management Limited”.ⁱⁱ Under the Operation Agreements, WHML was, and still is, the sole agent for HKH, MPHKL, and PHL and was responsible for supervising and directing the works of all of the employees working at the Hotels; and
- (g) The Hotels were operated by WHML as being part of one single undertaking. In particular, by June 2014 latest, the management of the Hotels were amalgamated with all of the relevant management decisions handled one centralised management team (under the direction and supervision of WHML).

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* the physical ticketing counter at the Hotels from as early as 2006.ⁱⁱⁱ During the material time of the contravention (e.g. July

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- 2016 until May 2017), Gray Line was granted a license to use a counter space at the lobby of the Hotels to provide travel-related services to the guests of the Hotels for a monthly licence fee.^{iv}
11. Tink Labs on the other hand first began licensing the use of the Handy Devices to the Hotels in 2014^v while the Ticketing Function was only enabled in around June 2015.^{vi}
 12. As at March 2016, Gray Line and Tink Labs were both selling the following tickets from the premises of the Hotels:
 - (a) Hong Kong Disneyland;
 - (b) Ocean Park Hong Kong;
 - (c) Peak Tram;
 - (d) Big Bus;
 - (e) Madame Tussauds; and
 - (f) The Hong Kong Airport Express(collectively referred to as the “**Relevant Tickets**”).^{vii}
 13. On 14 March 2016, dissatisfied with the fact that Tink Labs was selling tickets (including the Relevant Tickets) at the Hotels at a cheaper price than Gray Line’s sale price, Gray Line made a complaint by email to the Hotels.
 14. In the 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 that this would damage Gray Line’s relationship with the Hotels, Gray Line requested the Hotels to stop Tink Labs from selling their tickets *via* the Handy Devices.^{viii}
 15. In addition to the Hotels, Gray Line had sent similar complaint emails to other hotels in Hong Kong from which Gray Line and Tink Labs had both been selling tickets.

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16. Upon receipt of Gray Line’s email, on 15 March 2016, a representative of the Hotels sent an email to Tink Labs conveying Gray Line’s complaint and inquiring whether Tink Labs could stop the Ticketing Function on the Handy Devices.^{ix}
17. Thereafter in around mid-July 2016, following a series of emails and telephone communications from March to July 2016 between Gray Line and the Hotels on the one hand and the Hotels and Tink Labs on the other hand, Gray Line and Tink Labs agreed on the Subject Arrangement through the facilitation of the Hotels. In particular, in order to address Gray Line’s complaints, Tink Labs agreed to adjust the selling prices on the Ticketing Function to match the prices which Gray Line was charging for the Relevant Tickets.^x
18. By 19 July 2016 latest, Tink Labs had, in accordance with the Subject Arrangement, adjusted all of its prices for the Relevant Tickets to match the prices that were being charged by Gray Line. These prices were passed on from Gray Line to the Hotels, and then from the Hotels to Tink Labs.^{xi}

2.3 Subsequent monitoring of Tink Labs’ Prices

19. At or around the same time when the Subject Arrangement was entered into, Gray Line and Tink Labs also came to similar arrangements with regards to tourist attractions and transportation tickets that were being sold on the Handy Devices in other hotels in Hong Kong.
20. Pursuant to the Subject Arrangement, Tink Labs matched its prices with those of Gray Line until May 2017 when it started discounting its prices again.
21. By an email from Gray Line to the Hotels dated 16 March 2017, Gray Line noted that it had recently discovered that Tink Labs had been discounting its ticket prices at Gray Line’s other “*partner hotels*” and requested the Hotels to check whether the discounts were also being applied on the Ticketing Function on the Handy Devices in the Hotels.^{xii}
22. Upon verification by the Hotels, it was confirmed that Tink Labs was charging discounted prices for tickets to Hong Kong Disneyland and Ocean Park.^{xiii}

23. By an email dated 8 April 2017, the Hotels informed Gray Line that it had “*addressed the issue to [Tink Labs] to follow up*”.^{xiv} This email was acknowledged by Gray Line on 10 April 2017 in its return email to the Hotels.^{xv}
24. 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

25. 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
26. 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”

27. 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”.
28. 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

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”.

market, whether or not for profit, that activity will be considered as being “economic” in nature.⁴

29. 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 (such as the First Conduct Rule).⁵
30. 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
31. 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

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 §§55-56 with approval.

⁶ **W. Hing** (*supra*) at §304

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

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-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, together, may be liable for contravening competition law.¹¹
32. 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 Competition Tribunal ("**Tribunal**") or the issuing of an Infringement Notice), the

⁸ See in this regard the *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 the Competition and Consumer Commission of Singapore dated 30 January 2019 at §400 and §452.

¹¹ **W. Hing** (*supra*) at §§317-323

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”

33. 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.”*
34. 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

“Object” of Harming Competition

35. 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

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*

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.”*

36. Any agreement between competitors to fix the prices of goods or services they will charge their consumers will generally be regarded as having the object of harming competition.¹⁷
37. 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

38. 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 and that the contravention involves serious anti-competitive conduct; and
 - (b) It has not yet brought proceedings in the Tribunal in respect of the contravention.
39. 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 proceeding on condition that that person makes a commitment to comply 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.
40. 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 those persons it proposes to bring proceedings against for the undertaking’s contravention of the

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.

First Conduct Rule.

41. 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 commitments 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.
42. 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

43. 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) The Hotels which, as an undertaking that comprises HKH, MPHKL, and PHL (i.e. the owners of the Hotels) as well as WHML as the Hotels' management company, which despite not being active in the same market as Gray Line and Tink Labs, had facilitated the cartel between Gray Line and Tink Labs.
44. 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;

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- (b) The Subject Arrangement as 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 Hotels. 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 Hotels; and
 - (c) As a result of the Subject Arrangement, Tink Labs did, to the knowledge of Gray Line and the Hotels, increase the prices of its Relevant Tickets from July 2016 until May 2017.
- 45. The Subject Arrangement is conduct that falls within the definition of serious anti-competitive conduct under section 2(2) of the Ordinance.
- 46. As for the liability of each of HKH, MPHKL, PHL and WHML, the Commission considers that they, for the purpose of this Infringement Notice, were all part of the same undertaking and are therefore jointly and severally liable for the Hotels’ contravention of the First Conduct Rule. This is especially since:
 - (a) As a matter of practice, the Hotels were operated by WHML as being part of the same hotel group;
 - (b) In relation to WHML as the manager of the Hotels, the Operation Agreements provide, amongst other things, that the Hotels’ owners agree to indemnify and hold WHML free and harmless from any liability for injury to person or damage to property by reason of any cause whatsoever as a result of the performance as the manager of the Hotels and to reimburse WHML upon demand for, amongst other things, any money or other property which WHML is required to pay out for any reason in connection with the Hotels. Further, the Hotels’ owners also agree to defend at their own expense any claim, action or proceeding brought against WHML or the owners jointly or severally arising out of or connected with any of the provisions of the Operation Agreements. In these circumstances, WHML does not bear any financial or economic risks associated with the management of the Hotels; and

- (c) In accordance with the manner in which the Hotels were jointly managed by WHML, third parties (e.g. the hotel customers or other commercial parties such as Gray Line or Tink Labs) would often deal with and transact with the Hotels as though they part of the same undertaking.

5 RESPONDING TO THIS INFRINGEMENT NOTICE

5.1 Requirements of this infringement notice

47. The requirements of this Infringement Notice are set out in the commitment at Annex (1) to the notice. Should HKH, MPHKL, PHL and WHML make a commitment in the form set out in Annex (1) within the compliance period, the Commission will not institute proceedings against HKH, MPHKL, PHL and WHML in respect of the Subject Arrangement.
48. 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

49. HKH, MPHKL, PHL and WHML 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

50. If HKH, MPHKL, PHL and WHML notifies the Commission that it proposes to comply with the requirements of the 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.
51. In accordance with section 74 of the Ordinance, HKH, MPHKL, PHL, and WHML 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 infringement notice and commitment

52. 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 (1) THE HONGKONG HOTEL LIMITED; (2) THE MARCO POLO (HONG KONG) LIMITED; (3) THE PRINCE HOTEL LIMITED; AND (4) WHARF HOTELS MANAGEMENT LIMITED

Whereas:

- A. On 26 January 2021, the Competition Commission (“**Commission**”) issued an Infringement Notice to: (1) The Hongkong Hotel Limited; (2) The Marco Polo (Hong Kong) Limited; (3) The Prince Hotel Limited; and (4) Wharf Hotels Management Limited (each separately referred to as the “**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 The Marco Polo Hongkong Hotel, The Gateway Hotel and The Prince 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
 - (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 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:

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- (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 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;
 - (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**”));

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- (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:

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- (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.
- 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:

The Hongkong Hotel Limited

The Marco Polo Hotel (Hong Kong) Limited

Date:
Name:
Position:

Date:
Name:
Position:

The Prince Hotel Limited

Wharf Hotels Management Limited

Date:
Name:
Position:

Date:
Name:
Position:

CONFIDENTIAL ENDNOTE TO THE INFRINGEMENT NOTICE

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

ⁱ The Marco Polo Hotel (Hong Kong) Limited: Pursuant to Operations Agreement dated 2 January 2004, Renewal letters dated 30 June 2006, 30 June 2009, 13 August 2012 and 24 December 2015 respectively; The Hongkong Hotel Limited: Pursuant to Operations Agreement dated 2 April 2007, Memorandum of Addendum dated 16 November 2009, Memorandum of Second Addendum dated 27 December 2012, and Memorandum of Third Addendum dated 24 December 2015; The Prince Hotel Limited: Pursuant to Operations Agreement dated 2 January 2004, Renewal letters dated 30 June 2006, 30 June 2009, 13 August 2012 and 24 December 2015 respectively.

ⁱⁱ Certificate of Change of Name No. 264737 dated 19 April 2017.

ⁱⁱⁱ Paragraph 4 of the Cooperating Individual's Statement ("CIS") of [Marco Polo Hotels representative].

^{iv} Licensing Agreements between The Marco Polo Hotel (Hong Kong) Limited and Gray Line Tours of Hong Kong Limited ("Gray Line") dated 23 December 2015 and 28 December 2016 respectively; Licensing Agreements between The Prince Hotel Limited and Gray Line dated 23 December 2015 and 28 December 2016 respectively; Licensing Agreements between The Hongkong Hotel Limited and Gray Line dated 23 December 2015 and 28 December 2016 respectively.

^v Licensing Agreement dated 26 November 2014; Paragraph 7 of [Marco Polo Hotels representative]'s CIS.

^{vi} Excel Spreadsheet "Hotel Price_0829" provided by Tink Labs Limited ("Tink Labs") to the Commission on 29 August 2017.

^{vii} Excel Spreadsheet "Hotel Price_0829" provided by Tink Labs to the Commission on 29 August 2017; Email from [Gray Line representative] (Gray Line) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 3 June 2016.

^{viii} Email of [Gray Line representative] (Gray Line) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 14 March 2016.

^{ix} Email from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Tink Labs representative] (Tink Labs) of 15 March 2016, Paragraph 22 of [Marco Polo Hotels representative]'s CIS.

^x Email from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Tink Labs representative] (Tink Labs) of 11 July 2016; Emails from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Gray Line representative] (Gray Line) of 11 July 2016 and 18 July 2016; Email from [Tink Labs representative] (Tink Labs) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 19 July 2016.

^{xi} Email from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Tink Labs representative] (Tink Labs) of 11 July 2016; Emails from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Gray Line representative] (Gray Line) of 11 July 2016 and 18 July 2016; Email from [Tink Labs representative] (Tink Labs) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 19 July 2016.

^{xii} Email from [Gray Line representative] (Gray Line) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 16 March 2017.

^{xiii} Email from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 17 March 2017.

^{xiv} Email from [Marco Polo Hotels representative] (Marco Polo Hotels) to [Gray Line representative] (Gray Line) of 8 April 2017.

^{xv} Email from [Gray Line representative] (Gray Line) to [Marco Polo Hotels representative] (Marco Polo Hotels) of 10 April 2017.