

**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:**      **Royal Plaza Hotel Management Limited      Leverson Limited trading as Royal View**  
                  **trading as Royal Plaza Hotel                     Hotel**  
                  **[Address of legal representative]             [Address of legal representative]**

**Royal Park Hotel Management Limited**  
**Trading as Royal Park Hotel**  
**[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) Royal Plaza Hotel;
  - (2) Royal Park Hotel; and
  - (3) Royal View Hotel.

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

2. In particular, the Commission was investigating whether or not Tink Labs and Gray Line had, together with the Royal Hotels acting as facilitators,<sup>1</sup> 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 18(a) below), being tickets for certain tourist attractions sold by Gray Line and Tink Labs at the premises of the Royal Hotels (“**Subject Arrangement**”).

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<sup>1</sup> 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 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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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 Royal Hotels are part of a single undertaking comprising of:
    - (1) Royal Plaza Hotel Management Limited – trading as Royal Plaza Hotel (“**Royal Plaza**”);
    - (2) Royal Park Hotel Management Limited – trading as Royal Park Hotel (“**Royal Park**”); and
    - (3) Levenson Limited – trading as Royal View Hotel (“**Royal View**”).
  - (c) From around July 2016 to May 2017, the Royal Hotels had acted as facilitators in 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 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) Royal Plaza Hotel Management Limited, the operator of Royal Plaza;
  - (b) Royal Park Hotel Management Limited, the operator of Royal Park; and
  - (c) Levenson Limited, the owner and operator of Royal View.
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;

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- (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 services 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) In relation to the Royal Hotels, despite their separate legal personality, at all material times, the management of the Royal Hotels were coordinated such as by conducting weekly meetings of the senior representatives of each of the Royal Hotels.

## **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 was licensed by Royal Plaza to operate a tour counter located at the premises of Royal Plaza since 1 November 2014 at a monthly rent and pay Royal Plaza a “bonus” if its counter sales were sufficiently profitable in any particular month.
11. Tickets of sightseeing tours, tourist attractions, and transportation services available from Gray Line could also be purchased from the concierge of Royal View and Royal Park. In exchange, Royal View and Royal Park will receive a commission for every ticket sold from its concierge.<sup>i</sup>
12. On or before 6 November 2015, Tink Labs entered into a licensing agreement with each of Royal Plaza and Royal View granting them a licensed right to use the Handy Devices.<sup>ii</sup>
13. On 11 November 2015, Tink Labs entered into a licensing agreement with Royal Park granting to it a licensed right to use the Handy Devices.<sup>iii</sup>
14. In the period between May 2016 to July 2016, Tink Labs was engaged in discussions with a representative of Royal Plaza on finalising the terms and conditions of the use of the Handy Devices for all the Royal Hotels (“**T&C Discussions**”).
15. By reason of the on-going T&C Discussions and the following events, the Handy Devices were not installed in the rooms of Royal Plaza until early July 2016.

16. In or around March 2016, Gray Line became aware of Tink Labs’ business model and, in particular, the fact that it was selling sightseeing tours and theme park tickets as that of Gray Line from the premises of various hotels in Hong Kong.
17. On 12 May 2016, Gray Line sent an email to the senior management of Royal Plaza setting out the following complaint (“**Complaint**”):<sup>iv</sup>
- (a) Gray Line was aware that Tink Labs *“has been making sales call to hotels”* in Hong Kong;
  - (b) *“Handy currently offers sales of theme park and attraction tickets, as well as sightseeing tours to be available for purchase directly through Handy’s phone”*;
  - (c) All of the theme park tickets that were sold *via* Gray Line’s hotel tour desk *“... follows the published price of each theme park to protect the image of both Grayline and [Royal Plaza]”*; and
  - (d) On the basis of *“mutual respect”*, if Tink Labs approached the Royal Hotels again to advertise the installation of the Handy Devices, they should tell Tink Labs that *“they cannot provide sales of theme park tickets and sightseeing tours on the phone”*.
18. Upon receiving the Complaint, on 12 May 2016:
- (a) Royal Plaza conducted an internal comparison of the ticket prices that were sold by both Gray Line and Tink Labs<sup>v</sup> whereupon it was discovered by Royal Plaza that Gray Line and Tink Labs both sold tickets to Disneyland and Ocean Park (“**Relevant Tickets**”) but with Tink Labs selling at a cheaper price than Gray Line;<sup>vi</sup> and
  - (b) As part of Royal Plaza’s ongoing T&C Discussions with Tink Labs, Royal Plaza requested that Tink Labs “eliminate” the Ticketing Function in order to avoid potential liability for Royal Hotels arising from walking tours organised by Tink Labs (which were available for purchase through the Handy Devices) as well as *“because [they] have found there is a pricing conflict with [their] tour desk.”*<sup>vii</sup> as complained by Gray Line.

19. Following a series of meetings and communications from 12 May 2016 to 7 June 2016 between Gray Line and Royal Plaza on the one hand, and Royal Plaza and Tink Labs on the other hand, it was eventually agreed between Gray Line and Tink Labs through the facilitation of Royal Plaza that in exchange to being allowed to keep the Ticketing Function on the Handy Devices to be installed at Royal Plaza, Tink Labs would:
- (a) Refrain from selling tickets to any walking tours; and
  - (b) Increase the prices of the Relevant Tickets so that they would be in line with those sold by Gray Line.
20. Thereafter, in the course of finalising the T&C Discussions between Tink Labs and the Royal Hotels, on 8 June 2016, staff of Royal View was asked to provide an update on Royal View’s responses to matters raised in relation to the Handy Devices. Royal View staff set out their findings for the prices of tickets of tours and attractions sold on the Handy Devices in an email of the same date. Furthermore, it was reported in the same email that staff of Royal View had contacted Tink Labs and were informed by Tink Labs that it was working with Royal Plaza to modify the terms and conditions of the Handy Devices for all three Royal Hotels<sup>viii</sup>.
21. On 20 June 2016, Tink Labs expressly confirmed by email that *“we will take out the walking tour and line up the theme parks ticket price for all 3 properties (Royal Plaza, View and Park) by today.”*<sup>ix</sup> On the same day, Royal Plaza confirmed to the representatives of Royal View and Royal Park that as per the instructions from the management of Royal Hotels, Tink Labs had been requested to *“line up the T&C for all 3 properties”*<sup>x</sup>.
22. Further in between 22 June 2016 to 28 June 2016, emails were exchanged between Tink Labs and Royal Plaza, on behalf of all three Royal Hotels, confirming that Tink Labs had removed the walking tour function on the Handy Devices for all three Royal Hotels.<sup>xi</sup>
23. On 21 July 2016, Gray Line was informed of the Subject Arrangement by an email from Royal Plaza.

### **2.3 Subsequent monitoring of the Subject Arrangement**

24. Since the installation of the Handy Devices, Royal Plaza had arranged operators from the front office team to actively conduct “price monitoring” checks on the Handy Devices in each of the Royal Hotels to ensure that the prices of the Relevant Tickets sold by Tink Labs continued to match the prices of Gray Line by adopting the published prices.<sup>xii</sup>
25. In between 24 September 2016 to May 2017, the price monitoring and requests for adjustments were made by the Royal Hotels and Tink Labs on at least 11 occasions.<sup>xiii</sup>
26. Tink Labs had on 25 October 2016<sup>xiv</sup>, 19 December 2016<sup>xv</sup>, 18 January 2017<sup>xvi</sup> responded to the abovementioned price adjustment requests from Royal Plaza by notifying Royal Plaza that it had increased its ticket prices to match those of Gray Line.
27. 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**

28. 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 practice<sup>2</sup> where the object or effect of the agreement or concerted practice is to prevent, restrict, or distort competition in Hong Kong.<sup>3</sup>
29. Of relevance to this Infringement Notice, the First Conduct Rule is contravened where:
  - (a) Undertakings;
  - (b) Make or give effect to an agreement; and

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<sup>2</sup> 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”.

<sup>3</sup> 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”.



- (c) The agreement has the object of harming competition in Hong Kong.

“Undertakings”

30. 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”.
31. 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.<sup>4</sup>
32. 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.<sup>5</sup>
33. 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.<sup>6</sup>

“Agreement”

34. 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*”

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<sup>4</sup> Commission’s Guideline to the First Conduct Rule at §2.3.

<sup>5</sup> *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.

<sup>6</sup> **W. Hing** (*supra*) at §303.

*or intended to be enforceable by legal proceedings.”*

35. 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.<sup>7</sup> 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).<sup>8</sup>

#### “Object” of Harming Competition

36. 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.<sup>9</sup> 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.<sup>10</sup>
37. 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.<sup>11</sup>
38. 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.

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<sup>7</sup> *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”).

<sup>8</sup> *Ibid.*

<sup>9</sup> W. Hing (*supra*) at §§105-106.

<sup>10</sup> 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.*”

<sup>11</sup> 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.

### **3.2 Infringement Notices**

39. 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.
40. 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 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.
41. 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.
42. 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.
43. 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**

44. 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 Royal Hotels as an undertaking comprising Royal Plaza, Royal View and Royal Park, despite not being active in the same market as Gray Line and Tink Labs, had facilitated the cartel between Gray Line and Tink Labs.

45. 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 Royal Hotels. Specifically, Tink Labs had agreed to fix the prices of the Relevant Tickets by adopting Gray Line’s prices, i.e. the published prices, in order to address Gray Line’s complaint to Royal Plaza;
- (c) Royal Plaza only proceeded to install the Handy Devices as a result of having resolved Gray Line’s complaint by way of the Subject Arrangement; and
- (d) As a result of the Subject Arrangement, Tink Labs did, to the knowledge of Gray Line and the Royal Hotels, increase the prices of the Relevant Tickets to the same as that of Gray Line, from June 2016 until May 2017.

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46. The Subject Arrangement is conduct which falls within the definition of serious anticompetitive conduct under section 2(2) of the Ordinance. The Commission considers that, at all material times, the Royal Hotels were part of the same undertaking such that they are, together, jointly and severally liable for the contravention of the First Conduct Rule by making and giving effect to the Subject Arrangement. This is especially since, at all material times and as a matter of practice, Royal Plaza did act and give instructions for and on behalf of the other Royal Hotels (i.e. Royal Park and Royal View), including:

- (a) In June 2016 when Royal Plaza requested Tink Labs to “*line up the T&C for all 3 properties [i.e. the Royal Hotels]*”; and
- (b) On 15 October 2016 when Royal Plaza requested Tink Labs to adjust the prices on the Handy Devices that were installed in Royal Park.<sup>xvii</sup>

## **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 Royal Plaza, Royal View and Royal Park make a commitment in the form set out in Annex (1) within the compliance period, the Commission will not institute proceedings against Royal Plaza, Royal View and Royal Park 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. Royal Plaza, Royal View and Royal Park 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 Royal Plaza, Royal View and Royal Park notifies the Commission that it proposes to comply with the requirements of this Infringement Notice within the notification period,

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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, Royal Plaza, Royal View and Royal Park 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**

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.

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Issued 26 January 2021.

[Signed]

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**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) ROYAL PLAZA HOTEL MANAGEMENT LIMITED; (2) ROYAL PARK HOTEL MANAGEMENT  
LIMITED; AND (3) LEVERSON LIMITED**

**Whereas:**

- A. On 26 January 2021, the Competition Commission (“**Commission**”) issued an Infringement Notice to: (1) Royal Plaza Hotel Management Limited; (2) Royal Park Hotel Management Limited; and (3) Leverson 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 sold by Gray Line and Tink Labs at the premises of the Royal Plaza Hotel, Royal Park Hotel and Royal View 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

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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



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or hard copy to all of the Company's Staff at the rank of "Supervisor" or above in the "Front office" of the Rooms Division, the "Management Office, Accounts, Purchasing and Human Resources" of the Non-Rooms Division and the "Sales & Marketing, Marketing Communications and Reservations" of the Sales and Marketing Division, 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;

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- (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. 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:
- (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:**

**Royal Plaza Hotel Management Limited**

**Levenson Limited**

**Date:**

**Date:**

**Name:**

**Name:**

**Position:**

**Position:**

**Royal Park Hotel Management Limited**

**Date:**

**Name:**

**Position:**

## 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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- <sup>i</sup> Answer 1(b)(i) from Royal View’s answer (dated 14 February 2018) to the Commission’s Notice to produce documents and provide information under section 41 of the Competition Ordinance (Cap. 619); and Answer 1(b)(i) from Royal Park’s answer (dated 14 February 2018) to the Commission’s Notice to produce documents and provide information under section 41 of the Competition Ordinance (Cap. 619).
- <sup>ii</sup> License Agreement between Tink Labs Limited (“**Tink Labs**”) and Leveson Limited trading as Royal View Hotel dated 6 November 2015 and License Agreement between Tink Labs and Royal Plaza Hotel Management Limited trading as Royal Plaza Hotel dated 6 November 2015.
- <sup>iii</sup> License Agreement between Tink Labs and Royal Park Hotel Management Limited trading as Royal Park Hotel dated 11 November 2015.
- <sup>iv</sup> Email from [Gray Line representative] (“[Gray Line representative]”) of Gray Line Tours of Hong Kong Limited (“**Gray Line**”) to [Royal Hotels representative] dated 12 May 2016 at 3:22pm.
- <sup>v</sup> Emails between [Royal Hotels representative] and [Royal Hotels representative] (“[Royal Hotels representative]”) of Royal Plaza dated 12 May 2016 at 3:25pm; 5:25pm.
- <sup>vi</sup> Email from [Royal Hotels representative] to [Royal Hotels representative] dated 12 May 2016 at 5:25pm.
- <sup>vii</sup> Email from [Royal Hotels representative] (“[Royal Hotels representative]”) of Royal Plaza to [Tink Labs representative] (“[Tink Labs representative]”) of Tink Labs dated 12 May 2016.
- <sup>viii</sup> Emails between [Royal Hotels representative] of Royal View and [Royal Hotels representative] of Royal View dated 8 June 2016 at 4:31pm and 5:23pm.
- <sup>ix</sup> Email from [Tink Labs representative] to [Royal Hotels representative], copied to [Royal Hotels representative] and [Royal Hotels representative] dated 20 June 2016 at 3:32pm.
- <sup>x</sup> Email from [Royal Hotels representative] to [Royal Hotels representative] of Royal Park and [Royal Hotels representative] of Royal View dated 20 June 2016 at 7:16pm.
- <sup>xi</sup> Email from [Royal Hotels representative] to [Tink Labs representative] of 22 June 2016 at 4:12pm, Email from [Tink Labs representative] to [Royal Hotels representative] of 27 June 2016 at 12:10pm and Email from [Royal Hotels representative] to [Tink Labs representative] of 28 June 2016 at 12:51pm.
- <sup>xii</sup> Paragraph 24 of [Royal Hotels representative]’s CIS.
- <sup>xiii</sup> Email from [Gray Line representative] to [Royal Hotels representative] and [Royal Hotels representative] of 24 September 2016 at 10:42am; Email between Royal Plaza to [Tink Labs representative] dated 24 September 2016 at 08:32pm; Emails from Royal Plaza to [Gray Line representative] dated 30 January 2016 and 25 September 2016 at 5:48pm; Email from [Royal Hotels representative] (“[Royal Hotels representative]”) to Tink Labs’ Helpdesk (“**Helpdesk**”) of 15 October 2016 at 1:36pm; Email from [Royal Hotels representative] to Helpdesk dated 15 October 2016 at 4:49pm; Email from [Royal Hotels representative] to Helpdesk dated 18 December 2016 at 1:49pm; Email from Royal Plaza to Helpdesk dated 30 December 2016 at 10:08am; Email from Royal Plaza to Helpdesk dated 17 January 2017 at 1:51pm; Email from Royal Plaza to Helpdesk dated 17 January 2017 at 1:51pm; Email from Royal Plaza to Operator of Tink Labs dated 17 February 2017 at 9:10pm; Email from Royal Plaza to Helpdesk dated 7 March 2017 at 7:42pm; Email from Royal Plaza to Helpdesk dated 8 April 2017 at 3:36pm; Email from [Royal Hotels representative] to Helpdesk dated 13 April 2017 at 10:55am; Email from Royal Plaza to Helpdesk dated 29 April 2017 at 2:30pm; and Email from Royal Plaza to Support Service of Handy dated 28 April 2017 at 10:53pm.
- <sup>xiv</sup> Email from [Tink Labs representative] to [Royal Hotels representative] and [Royal Hotels representative] dated 25 October 2016 at 12:37pm.
- <sup>xv</sup> Email from Helpdesk to [Royal Hotels representative] dated 19 December 2016 at 12:55pm.
- <sup>xvi</sup> Email from Helpdesk to Royal Plaza dated 18 January 2017 at 8:21pm.
- <sup>xvii</sup> Email from [Royal Hotels representative] to Helpdesk dated 15 October 2016 at 4:49pm.