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# The Hong Kong Competition Commission Issues Infringement Notices against Hotel Groups for Facilitating a Price-fixing Cartel

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On February 17, 2021, the Hong Kong Competition Commission (the “**Commission**”) issued infringement notices (the “**Infringement Notices**”) against six hotel operators and a tour counter operator inside a hotel (the “**Recipients**”) for facilitating a cartel between two travel service operators that fixed the ticket prices of tourist attractions and transport, in violation of the Hong Kong Competition Ordinance (the “**CO**”).

The Commission found that, between March 2016 and May 2017, travel service operators Gray Line and Tink Labs agreed to fix prices for tourist attractions and transport tickets. The tickets were sold at the hotels, by Gray Lines at physical counters and by Tink Lab via its smartphones installed in hotel rooms. As such, Gray Line and Tink Labs were competing undertakings that sold the same tourist attractions and transportation tickets in Hong Kong. While the Recipients did not sell the tickets themselves, they passed on pricing information between Gray Line and Tink Labs and – in the Commission’s words – “nevertheless actively contributed to the implementation of a price-fixing cartel between the two competing travel service providers”.

The Commission considered that the Recipients have breached the First Conduct Rule of the CO, which prohibited anticompetitive agreements. The Commission issued Infringement Notices against the Recipients, but offered not to initiate proceedings before the Competition Tribunal to the extent the Recipients comply with the conditions in the Infringement Notices. In contrast, Gray Line and Tink Labs did not receive the Infringement Notices – this likely suggests that further enforcement actions will be taken against the two travel service operators.

## *Key observations on the Infringement Notices:*

### *1. Facilitators of cartel arrangement can be caught by the CO*

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This case is the first enforcement action in Hong Kong against “hub and spoke” cartels, in which businesses who did not participate in the cartel but facilitated the cartel by passing on competitively sensitive information (“**CSI**”) were targeted. “Hub-and-spoke” cartels denote cartel arrangements in which competitors obtain CSI via third-party conduits, especially where (i) CSI is shared with the third party with the intention that such information will then be passed to a competitor to affect its market-facing conduct; and (ii) the recipient then uses the information to modify its behavior.

Businesses should be mindful of their obligations under the CO not to facilitate the exchange of CSI between competitors, bearing in mind that facilitators are considered part of the cartel and that mere facilitation may also amount to “serious anticompetitive conduct”. According to the Commission’s guidance, CSI includes information relating to “price, elements of price or price strategies, customers, production costs, quantities, turnover, sales, capacity, product quality, marketing plans, risks, investments, technologies, and innovations”. In general, the Commission considers that information relating to price and quantities (such as revenue and market shares) is the most competitively sensitive.

## *2. Cooperation with the Commission in investigations could lead to favorable outcomes*

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Even though the Recipients' conduct is classified as serious anticompetitive conduct, meaning that under the CO, the Commission has the right to prosecute the alleged infringers before the Competition Tribunal straight away without issuing any warning, the Commission elected to issue infringement notices without prosecuting the case to the extent the Recipients comply with conditions set forth in the Infringement Notices.

In explaining its choice of enforcement action, the Commission stated that it has considered a number of factors, including the nature of the Recipients' conduct as facilitators and their early and active cooperation with the Commission's investigation. The Commission thus considered the use of infringement notice as an enforcement outcome against the seven Recipients to be appropriate and proportionate.

The Commission's choice of enforcement action signals the importance of cooperation with the Commission in investigations. While the Commission has the discretion to initiate more aggressive enforcement actions, given the Recipients' active cooperation with the Commission, the Commission chose to issue Infringement Notices and offered not to bring proceedings before the Competition Tribunal. This means that Recipients could escape financial penalties, the maximum being 10% of Hong Kong-based turnover for the entire group for the whole duration of the infringement (with a three-year cap).

In exchange for the Commission's promise to not initiate proceedings, five of the larger Recipients have committed to appoint an independent compliance advisor who will provide them with advice and propose rectifying measures to minimize their risk of engaging in similar anticompetitive conduct in the future. The remaining two Recipients have committed to a specific set of compliance-oriented measures appropriate to their size and business circumstances.

### *3. The Commission continues to focus on consumer-facing sectors and does not shy away from targeting larger businesses*

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This case is the Commission's second published enforcement action concerning the tourism sector, following the Commission's acceptance of commitments from three online travel agents in May 2020, signaling the Commission's interest in the tourism sector – in line with the Commissions' published enforcement policy and guidance which stated that the Commission would focus on consumer-facing markets.

According to the Commission's 2019/2020 annual report, other priority sectors that see the most number of ongoing initial assessment and investigations include: (i) real estate and property management, (ii) transport, logistic and storage, (iii) information technology, (iv) machinery and equipment, and (v) beauty and personal care products and services.

Meanwhile, Mr. Samuel Chan noted that the Recipients "include some of the largest hotel groups in Hong Kong", showing that the Commission does not shy away from investigating and taking actions against larger businesses.

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