SLAUGHTER AND MAY/

CLIENT BRIEFING

MARCH 2026

TOURIST ATTRACTION TICKETS CARTEL CASE: CLARIFYING THE BASIS FOR FACILITATOR LIABILITY IN HONG KONG

On 4 March 2026, the Competition Tribunal (the **Tribunal**) handed down its judgment in *Competition Commission v Gray Line Tours of Hong Kong Ltd & Ors* [2026] HKCT 1, dismissing the case brought by the Hong Kong Competition Commission (**HKCC**) case against Harbour Plaza 8 Degrees Limited and Harbour Plaza Hotel Management Limited (collectively, **Harbour Plaza**). This decision is significant as it represents the first occasion on which the Tribunal considered whether and how a party may be liable under Hong Kong competition law for "facilitating" an anti-competitive arrangement and, in doing so, the Tribunal expressly departed from established EU jurisprudence. The key takeaways from the judgment and wider *Tourist Attraction Tickets* cartel case are summarised below.

1. Factual background

1.1. The case concerned the sale of tourist attraction tickets to hotel guests in Hong Kong through two competing channels: Gray Line Tours of Hong Kong Limited (**Gray Line**), which operated hotel tour desks, and Tink Labs Limited (**Tink Labs**), which sold tickets via mobile devices offered free of charge to hotel customers. Between March to May 2016, Gray Line complained to a number of hotels that Tink Labs was offering tickets at lower prices, which Gray Line said had caused customer confusion and harmed its business. Several hotels, including Harbour Plaza, liaised with Tink Labs to adjust its prices to match Gray Line's published prices. The hotel itself did not otherwise sell these tourist attraction tickets and did not receive any additional financial benefit from putting this arrangement in place.

1.2. HKCC alleged that Harbour Plaza (and other hotels) had contravened section 6 of the Competition Ordinance (Cap.619) (the **Ordinance**), by facilitating a price-fixing arrangement between two competing travel service operators, Gray Line and Tink Labs. In particular, between May 2016 and May 2017, Harbour Plaza (and other hotels) had actively procured Tink Labs to agree with the price-fixing arrangement and shared pricing information belonging to Gray Line with Tink Labs (the **Alleged Conduct**).

1.3. As detailed below, Harbour Plaza was the last of a number of respondents the HKCC had investigated in relation to the Alleged Conduct. Several other parties resolved the matter with the HKCC at an earlier stage, including through commitments and infringement notices issued as early as in 2021.

1.4. The proceedings against Harbour Plaza came before the Tribunal for trial in February 2025, almost a decade after the Alleged Conduct. In summary, while the Tribunal found – applying the criminal standard of proof (i.e. beyond all reasonable doubt) – that Harbour Plaza had in fact facilitated the price alignment on the facts, it nevertheless dismissed the HKCC's case. The Tribunal held that the First Conduct Rule (**FCR**) under section 6 of the Ordinance does not extend to facilitation conduct as pleaded by the HKCC, notwithstanding that there is clear EU jurisprudence that facilitation falls under Article 101 of the Treaty of the Functioning of the European Union (**TFEU**).[1] Instead, the Tribunal held that the case against Harbour Plaza should have been brought under section 91 of the Ordinance, which provides a separate and distinct basis for liability for persons "involved in contravention of a competition rule" – an approach that differs from EU competition law.

[1] Article 101 TFEU is the EU equivalent of section 6 of the Ordinance.

2. Tribunal draws a clear line between sections 6 and 91

2.1. The central issue before the Tribunal was whether the alleged *facilitation* of a price-fixing arrangement falls within the scope of the FCR under section 6, or whether such conduct must instead be pursued under section 91. This distinction was determinative, as the HKCC advanced its case solely under the FCR, without pleading section 91 in the alternative, notwithstanding that section 91 entails different and additional elements of liability.

2.2. For context, section 6 prohibits an undertaking from "making or giving effect to" an agreement, concerted practice or decision of an association of undertakings that has the object or effect of preventing, restricting or distorting competition in Hong Kong. By contrast, section 91 applies to any person who is "involved in" a contravention of a competition rule, which includes aiding, abetting, counselling or procuring another person's breach, or by being "in any way, directly or indirectly, knowingly concerned" in the breach. Section 91 therefore assumes the existence of a primary infringement by another party and appears to capture secondary involvement, subject to evidence of knowledge and intent.

2.3. Harbour Plaza therefore argued that FCR and section 91 established two distinct bases of liability under the Ordinance. On the facts as pleaded by the HKCC, the allegation of facilitation properly belonged to section 91 because:

- the FCR applies only to undertakings that themselves engaged in anti-competitive agreements or concerted practices, and does not extend to those who merely facilitate others' conduct; and
- section 91 applies to persons who have been involved in such a contravention, including by aiding, abetting, counselling or procuring another person' contravention, and was therefore the appropriate basis of liability in the current case.

2.4. In contrast, the HKCC relied on EU jurisprudence under Article 101 TFEU, in particular the *AC-Treuhand* line of cases, in which the EU courts held that an undertaking which is not active on the relevant product market may nonetheless infringe Article 101 if it knowingly contributes to, or facilitates, the implementation of a cartel.[2] In *AC-Treuhand*, the EU courts accepted that an intermediary which organised meetings, transmitted information and otherwise supported cartel coordination could be treated as having participated in the infringement, notwithstanding that it was not a competitor of the cartelists. The HKCC argued that, by analogy, a hotel which relayed pricing information and acted as a conduit between competing ticket sellers could be regarded as having "given effect to" an anti-competitive arrangement for the purposes of the FCR.

2.5. The Tribunal rejected the HKCC's argument and held that the reliance on *AC-Treuhand* was misplaced because the Hong Kong statutory framework differs fundamentally from that of the EU.[3] Unlike the EU regime where Article 101 is the sole basis for cartel liability, the Ordinance contains an express and standalone provision in section 91 dealing with facilitation and other forms of involvement in a contravention. In those circumstances, the Tribunal agreed with Harbour Plaza that the FCR should not be given an expansive interpretation to encompass facilitation conduct, where section 91 is expressly designed to capture such conduct. The case should have been brought under section 91 of the Ordinance and not section 6.

2.6. The decision draws a clear distinction between sections 6 and 91 under Hong Kong competition law. It confirms that the FCR is concerned with primary participation in anti-competitive agreements or concerted practices, while section 91 provides the appropriate statutory basis for pursuing intention facilitation or other secondary involvement. The judgment underscores the importance of careful characterisation of the conduct in pleadings by the HKCC and provides greater certainty for intermediaries or facilitators with regards to their potential liability.

---

[2] See the CJEU's judgment in *AC-Treuhand AG v European Commission (Re Heat Stabilisers Cartel)* [2015] CMLR 26, on appeal from the General Court's judgment of 2014, in connection with the European Commission's decision of 11 November 2009.

[3] This may be contrasted with the Tribunal's earlier judgment in *Competition Commission v Nutanix Hong Kong Ltd and Others* [2019] HKCT 2 in which it was observed that EU case law is of "obvious value" in relation to the interpretation and application of the FCR.

3. Other observations of the Tribunal

3.1. While the Tribunal dismissed the HKCC's case on the basis of the Hong Kong statutory framework, it went on to make a number of interesting *obiter* observations:

- In relation to "facilitation", the Tribunal indicated that liability would require evidence that the alleged facilitator:

    a. was aware of the existence of the agreement or concerted practice;

    b. made a contribution to the object or effect of that agreement or concerted practice, going beyond a merely peripheral role; and

    c. intended, through its conduct, to contribute to that object or effect.

- The Tribunal also considered what is required for conduct to be regarded as anti-competitive by object. It held – consistent with both the Tribunal's previous decisions[4] and EU jurisprudence - that an agreement will be anti-competitive by object where it falls within a category of arrangements that, by their very nature, are liable to prevent, restrict or distort competition in Hong Kong. In assessing this, the Tribunal must examine the terms and context of the agreement, to determine whether such an inference can be reasonably drawn, but it is not necessary to establish actual anti-competitive effect as a matter of fact.

4. Divergent outcomes across the respondents under the 'staggered' approach

4.1. As mentioned above, the Tribunal's latest judgment concerns the final outstanding respondent in the long-running *Tourist Attraction Tickets* cartel proceedings. By the time the case against Harbour Plaza came to trial, all other parties connected with the Alleged Conduct had resolved their position with the HKCC through a range of different procedural routes. The case therefore provides a useful illustration of how a multi-party cartel investigation can unfold in a staggered manner, with outcomes shaped not only by the nature of each party's involvement, but also by the timing and extent of cooperation with the HKCC:

- Tink Labs was not proceeded against by the HKCC. It had reported the cartel conduct to the HKCC an cooperated with the HKCC, thereby benefiting from immunity from enforcement action under the HKCC's leniency policy.

- Seven parties comprising six hotel groups and a tour counter (located inside one of the hotels) cooperated at an early stage and received infringement notices under section 67 of the Ordinance from the HKCC in 2021 and subsequently provided commitments to the HKCC, in lieu of enforcement proceedings before the Tribunal (see our February 2021 newsletter).

- Gray Line and Tak How Investment (trading as Intercontinental Grand Stanford Hong Kong) settled the proceedings with the HKCC in 2022, agreeing to pecuniary penalties of HK$4,177,000 (approximately £400,000) and HK$1,600,000 (approximately £152,000) respectively, following a 25% and 20% cooperation discount. A director disqualification order was also made against the managing director of Gray Line (see our December 2022 Client Briefing).

- Prudential Hotel (BVI) Limited (**Prudential Hotel**) admitted liability but contested the penalty proposed by the HKCC. The HKCC had sought to impose a fine of HK$1,250,000 (approximately £119,000). In March 2025, the Tribunal imposed a substantially lower penalty of HK$104,000 (approximately £10,000) on the basis that Prudential Hotel had only received a monthly licence fee of HK$171,290 (approximately £16,250) from Gray Line's counters during the period of contravention (which had lasted less than a year), and it did not receive any direct income from the ticket sales (see our December 2025 Client Briefing).

4.2. The Tribunal's acceptance of different outcomes across respondents in this case is consistent with the approach recognised by the recent Court of Appeal in *Competition Commission v ATAL Building Services Engineering Ltd & Ors* [2025] HKCA 1120. In that case, the Court of Appeal confirmed that the Tribunal enjoys a broad case-

[4] See *Competition Commission v Nutanix Hong Kong Ltd and Others* [2019] HKCT 2; *Competition Commission v W. Hing Construction Co Ltd* [2019] HKCT 3.

management discretion in multi-respondent actions, including the discretion, where appropriate, to sequence the determination of pecuniary penalties for settling parties separately from the trial of non-settling respondents.

4.3. Further, these outcomes illustrate the breadth of enforcement tools available to the HKCC and how they may be deployed to achieve efficient enforcement outcomes ranging from immunity, infringement notices and commitments for early cooperating parties, and ultimately full Tribunal proceedings for those that choose not to cooperate.

5. Conclusion

5.1. The Tribunal's judgment in the *Tourist Attraction Tickets* cartel case provides important clarification on the proper characterisation of facilitation conduct under the Ordinance. While the Tribunal accepted, on the facts, that Harbour Plaza had facilitated price alignment between competing ticket sellers, it made clear that such conduct must be pursued under section 91 rather than the FCR under section 6. In doing so, the Tribunal has drawn a principled boundary between primary cartel participation and secondary involvement, bringing greater certainty to the statutory framework, and a readiness to depart from EU jurisprudence where necessary. The case also illustrates the HKCC's flexible and staggered approach in complex investigations, as well as the potential for materially different enforcement outcomes.

CONTACTS

NATALIE YEUNG
PARTNER
T: + 852 2901 7275
E: natalie.yeung@slaughterandmay.com

YVONNE NGAI
ASSOCIATE
T: + 852 2901 7324
E: yvonne.ngai@slaughterandmay.com

BEN STANWORTH
ASSOCIATE
T: + 852 2901 7311
E: ben.stanworth@slaughterandmay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650