CTEA 1/2022

[2023] HKCT 2

**IN THE COMPETITION TRIBUNAL OF THE**

# HONG KONG SPECIAL ADMINISTRATIVE REGION

**COMPETITION TRIBUNAL ENFORCEMENT ACTION NO 1 OF 2022**

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BETWEEN

COMPETITION COMMISSION Applicant

and

GRAY LINE TOURS OF HONG KONG LIMITED 1st Respondent

HARBOUR PLAZA 8 DEGREES LIMITED 2nd Respondent

HARBOUR PLAZA HOTEL MANAGEMENT 3rd Respondent  
LIMITED

PRUDENTIAL HOTEL (BVI) LIMITED 4th Respondent

TAK HOW INVESTMENT LIMITED (TRADING 5th Respondent  
AS INTERCONTINENTAL GRAND STANFORD   
HONG KONG)

WU SIU IENG MICHAEL 6th Respondent

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Before: Hon Harris J, President of the Competition Tribunal in Chambers

Date of Hearing: 2 September 2022

Date of Decision: 14 June 2023

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D E C I S I O N

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**Introduction**

1. On 20 January 2022 the Commission issued an Originating Notice of Application seeking declarations that the 1st and 5th Respondents had breached the First Conduct Rule (*s6* of the *Competition Ordinance*, Cap. 619 “**Ordinance**”), the 6th Respondent had been involved in the contravention of the First Conduct Rule (*s94(1)* of the *Ordinance*), penalties against the 1st and 5th Respondents and a disqualification order against the 6th Respondent, as a consequence of agreements to which the 1st and 5th Respondents had been parties to determine the price at which tickets to tourist attractions and transportation services were to be sold. I shall refer in this decision to the 1st, 5th and 6th Respondents collectively as the “Respondents”. As a consequence of agreements, encapsulated in a consent summons dated 29 April 2022, reached between the Commission and the Respondents, the Respondents have admitted the alleged contraventions and agreed with the Commission that the proceedings against them should be disposed of by the *Kam Kwong* procedure. As is normal the parties have agreed comprehensive Statements of Agreed Facts. They have also agreed the penalties and costs orders that should be made; recognising that these are ultimately a matter for the Tribunal to determine. The present application is for judgment to be entered against the Respondents in accordance with the *Kam Kwong* procedure.
2. The application is straightforward and on 12 July 2022 I made orders in the terms agreed by the Parties, what, however, requires detailed consideration is the redaction of some of the financial information and names in the Statements of Agreed Facts. An application has been made by the Commission, with the support of the Respondents, pursuant to *Rule 37* of the *Competition Tribunal Rules*, Cap 619D for an order that those parts of the Statements of Agreed Facts containing confidential information should be redacted. In CTEA 1/2021 a similar application was made as part of the application I heard on 10 June 2022 for orders in accordance with the *Kam Kwong*[[1]](#footnote-1) procedure against the 1st to 4th Respondents (“**2021 Respondents**”). In that case it was sought to redact both the names of certain individuals who were not Respondents referred to in the Statements of Agreed Facts and also some financial information. Although I made an order in accordance with the agreement that had been reached between the Commission and the 2021 Respondents, I adjourned the issue of redaction at the request of the Commission in order that it and the Respondents could give further thought to the issue. After I raised similar concerns with the Commission’s counsel at the hearing in the present matter on 12 July 2022, I was asked to adjourn the application for redaction in the present case in order that it could be considered more fully along with the similar application in CTEA 1/2021 on 2 September 2022. This I directed. My decision on the applicable legal principles and the approach to applications for confidentiality orders are contained in my decision handed down in CTEA 1/2021[[2]](#footnote-2) along with this decision. In this decision I address only how they apply to the facts of this case. That is the first matter that I deal with. I then deal with the substantive application.

**Confidentiality Orders**

1. It is not necessary to repeat the analysis of the principles that guide the Tribunal in dealing with applications for redaction of information in decisions and statements of agreed facts in *Kam Kwong* proceedings. I am not prepared to order that all the information of which redaction is sought by the Commission, which broadly mirrors the redactions as against the public in the notice of originating application. In respect of financial information, I will allow redaction of figures and sums from 1 June 2021, ie, approximately two years before this decision. In the absence of any detailed explanation why any older information needs to be kept confidential it seems to me that this period, mirroring what I understand to be the English practice, is sufficient. The names of individuals can be replaced with the description “an employ of X Limited or X Respondent” or similar appropriate wording. Statements of Agreed Facts prepared in accordance with these criteria are to be prepared by the Commission and will be appended to a separate short decision.
2. There is one particular legal question, which I will deal with for completeness, namely, the submission that *Rule 37* applies to the Statements of Agreed Facts. The Statement of Agreed Facts form part of the judgment to be entered by the Tribunal pursuant to the *Kam Kwong* procedure. *Rule 37(1)* provides:

“A party (the applicant) may apply for an order to treat the whole or part of the following document as confidential—

(a) a document (other than an originating document) filed in connection with any proceedings; or

(b) a document (including an originating document) intended to be filed, served or otherwise disclosed in connection with any proceedings.”

1. Although the Statement of Agreed Facts has been filed as part of the suite of documents constituting the application for an order pursuant to *Rule 37(5)*, it is not those versions of the documents that the application is directed to. What is sought is redaction of parts of what will be appendices to the judgment and as the judgment is not a document “filed in connection with any proceeding”, or “intended to be filed, served or otherwise disclosed” but part of the judgment produced by the Court determining the proceedings, *Rule 37* does not apply. This in my view is entirely unsurprising.

**Kam Kwong Procedure**

1. The Commission seeks the following orders against the Respondents. These are not opposed by the Respondents.
2. As against the 1st and 6th Respondents:
   1. There be a declaration that the 1st Respondent has contravened the First Conduct Rule under section 6 of the Competition Ordinance (Cap. 619) (“**Ordinance**”) pursuant to section 94(1) of the Ordinance;
   2. The 1st Respondent do pay to the Government of the Hong Kong Special Administrative Region (the “**Government**”) a pecuniary penalty in the sum of HK$4,177,000 pursuant to section 93 of the Ordinance, payable by four equal installments, HK$1,044,250 each, at 6-month intervals, the first installment within 14 days from the date hereof and provide documentary evidence of each of these payments to the Applicant within seven days from the date of payment;
   3. The 1st Respondent do pay to the Government investigation costs agreed at the sum of HK$76,000 pursuant to section 96 of the Ordinance;
   4. The 1st Respondent do pay the Applicant’s costs of and incidental to these proceedings as against the 1st Respondent, to be taxed if not agreed;
   5. There be a declaration that the 6th Respondent has been involved in the contravention of the First Conduct Rule pursuant to section 94(1) of the Ordinance; and
   6. There be a disqualification order against the 6th Respondent for a period of three years from the date of the order to be made herein under section 101 of the Ordinance.
3. As against the 5th Respondent:
   1. There be a declaration that the 5th Respondent has contravened the First Conduct Rule under section 6 of the Competition Ordinance (Cap. 619) (“**Ordinance**”) pursuant to section 94(1) of the Ordinance;
   2. The 5th Respondent do pay to the Government of the Hong Kong Special Administrative Region (the “**Government**”) a pecuniary penalty in the sum of HK$1,600,000 pursuant to section 93 of the Ordinance within 14 days from the date hereof and provide documentary evidence of such payment to the Applicant within 7 days from the date of payment;
   3. The 5th Respondent do pay to the Government investigation costs agreed at the sum of HK$76,000 pursuant to section 96 of the Ordinance; and
   4. The 5th Respondent do pay the Applicant’s costs of and incidental to these proceedings as against the 5th Respondent, to be taxed if not agreed.
4. It is not necessary to repeat the background and facts constituting the breach of the First Conduct Rule and, in the case of the 5th Respondent, involvement in breach of the First Conduct Rule. This is explained in the Statements of Agreed Facts. Neither is it necessary for me to repeat the provisions of the *Ordinance* and the legal principles relevant to the question of contravention. These are comprehensively explained in *Kam Kwong[[3]](#footnote-3)*. I am satisfied that the facts set out in the Statements of Agreed Facts demonstrate that the 1st and 5th Respondents breached *section* *6* of the *Ordinance* and the 6th Respondent was involved in a breach of the First Conduct Rule *(section 91(b)* and *(d)* of the *Ordinance)*. I explain the criteria that must be satisfied for the Tribunal to grant a declaration in [38]–[39] of my decision in *Kam Kwong*[[4]](#footnote-4). They are satisfied in the present case. I will produce further short reasons to which Statements of Agreed Facts redacted in accordance with this decision will be appended when they have been submitted by the Commission. I make a costs order *nisi* that there be no order as to costs in respect of the proceedings after 12 July 2022.

(Jonathan Harris)

President of the Competition Tribunal

Mr Derek Chan SC and Ms Allison Wong, instructed by Pinsent Masons, for the applicant

Mr Tony Ko, instructed by Johnny K K Leung & Co, for the 1st and 6th respondents

Mr Timothy Parker, instructed by Norton Rose Fulbright Hong Kong, for the 2nd and 3rd respondents

Mr Nigel Francis, instructed by YTL LLP, for the 4th respondent

Attendance of Deacons, for the 5th respondent, was excused

1. *Competition Commission v Kam Kwong Engineering Co Ltd* [2020] 4 HKLRD 61; [2020] HKCT 3. [↑](#footnote-ref-1)
2. [2023] HKCT 1. [↑](#footnote-ref-2)
3. *Supra*. [↑](#footnote-ref-3)
4. *Supra*. [↑](#footnote-ref-4)