CTEA 1/2022

[2023] HKCT 3

**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 Written Submissions: 10 March 2023

Date of Decision: 23 June 2023

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D E C I S I O N

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1. On 10 March 2023 the 4th Respondent issued an *ex parte* summons seeking an order that “*The 4th Respondent do have leave to be represented at the trial of the action listed for 29 November 2023 by a solicitor David Nigel Francis*”. The margin note refers to Competition Tribunal Rule 30(1)(b)(ii). Rule 30 deals with the “Right of Audience” before the Tribunal and is in the following terms:

“**30. Right of audience**

(1) In any proceedings, a party—

(a) subject to subrule (2), may appear in person and be heard; or

(b) may be represented by—

(i) a counsel or solicitor having a right of audience before the CFI in its civil jurisdiction; or

(ii) any other person allowed with the leave of the Tribunal to appear on the party’s behalf.”

1. Sub-rule (2) has no application as it only deals with a body corporate which intends to be represented by one of its directors and the sub-rule provides that Order 5 rule 6 and Order 12 of the Rules of the High Court apply in such circumstances.
2. The meaning of Sub-rule (1)(b) is in my view quite clear: a party in any proceedings before the Tribunal may be represented by a (**A**) counsel or (**B**) a solicitor having a right of audience before the Court of First Instance (“**CFI**”) in its civil jurisdiction or (**C**) a person other than counsel or a solicitor with a right of audience before the CFI in its civil jurisdiction (emphasis added). This mirrors the position in respect of hearings in open court before the CFI, which is what one would expect particularly given the provisions of *section 144(1)* of the *Competition Ordinance*, Cap. 619, which provides “*The Tribunal may decide its own procedures and may, in so far as it thinks fit, follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction, and for this purpose, has the same jurisdiction, powers and duties of the Court in respect of such practice and procedure, including the jurisdiction, powers and duties of the Court in respect of costs*”. *Sub-section 144(3)* refers to the Tribunal conducting hearings with as much informality as is consistent with obtaining justice, but this does not seem to me to instructive when determining, who may represent a party particularly when Rule 30 expressly deals with the matter. *Sub-section 144(3)* is directed towards procedure more generally and encourages flexibility in the conduct of the proceedings, which has nothing in itself to do with who is representing a party.
3. The language of Rule 30(1) suggests that the drafter had in mind trials or types of hearings, which are conducted in open court by the CFI. Only barristers and solicitors with higher rights of audience are entitled to represent a party in open court. It seems to me that Rule 30(1) is intended to mirror the practice in the CFI. Generally, only a barrister or solicitor with higher rights of audience is allowed to appear in open court. There are limited exceptions, for example, a solicitor without rights of audience can appear in open court in a company’s winding up case if the matter is agreed. It is not the practice to allow a solicitor without higher rights of audience to conduct a trial in the CFI. This is what Mr Francis wishes to be able to do. In my view there is no reason for the Tribunal, which is in substance sitting as a specialist division of the CFI, to depart from the normal practice. I, therefore, decline the application, which I dismiss with no order as to costs.
4. What this application has brought to light is an anomaly in the drafting of Rule 30, which does not distinguish between trials and other hearings (there being no clear demarcation between an open court hearing and a chambers hearing before the Tribunal, which never sits robbed). Solicitors without higher rights of audience need the leave of the Tribunal to appear at any hearing. In practice I would expect the Tribunal to treat this as largely formal and give a solicitor without rights of audience leave to appear at any hearing other than a trial.

(Jonathan Harris)

President of the Competition Tribunal

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