競爭事務委員會
COMPETITION
COMMISSION

NON-CONFIDENTIAL VERSION - FOR PUBLICATION

CASE AD/02NH

COMMISSION DECISION UNDER SECTION 11(1) OF THE COMPETITION ORDINANCE IN RELATION TO A PROPOSED PHARMACEUTICAL SALES SURVEY

STATEMENT OF REASONS

26 September 2019

TABLE OF CONTENTS

1 INTRODUCTION AND SUMMARY

1.1 On 31 January 2019, the Competition Commission ("**Commission**") received an application for a decision ("**Application**") under section 9 of the Competition Ordinance (Cap. 619) ("**Ordinance**") from the Hong Kong Association of the Pharmaceutical Industry ("**HKAPI**" or "**Applicant**"). The Commission's case reference number is AD/02NH.

1.2 The Application concerns the Applicant's proposed arrangements to conduct and publish a survey comprising data on the sales of prescription and over-the-counter pharmaceutical products (Western medicine) in Hong Kong ("**Proposed Survey**").[1]

1.3 The Applicant does not consider that the operation of the Proposed Survey contravenes the first conduct rule contained in section 6(1) of the Ordinance. In any event, it considers that the Proposed Survey will enhance economic efficiency within the meaning of section 1 (*Agreements enhancing overall economic efficiency*) of Schedule 1 to the Ordinance ("**efficiency exclusion**" or "**exclusion**"). It therefore seeks a decision from the Commission confirming that the operation of the Proposed Survey, as specified in the Application, is excluded from the first conduct rule in the Ordinance as a result of the efficiency exclusion.[2]

1.4 The purpose of the Application is to obtain legal certainty that, should the Commission consider that competition concerns arise from the operation of the Proposed Survey, the efficiency exclusion applies. The Applicant has indicated that the Proposed Survey would be launched if a "*satisfactory decision*" is received from the Commission.[3]

1.5 Further details regarding the Applicant and the Proposed Survey are in Part 2 below, while further details of the efficiency exclusion and the relevant submissions from the Applicant are in Part 3.

---

[1] As explained further in paragraph 3.2 below, the Applicant will also include data on the sales of pharmaceutical products in Macau, but its activities in this respect are beyond the scope of the Application.

[2] Application, paragraphs 4 and 5.

[3] Application, paragraphs 22 and 38.

Legal framework for issuance of a decision

1.6 Schedule 1 to the Ordinance provides for certain general exclusions which, if applicable to a particular agreement, mean that the first conduct rule does not apply. These include the efficiency exclusion.

1.7 Under section 9(1) of the Ordinance, an undertaking that has made, or proposes to make, an agreement may apply to the Commission for a decision as to whether or not an agreement is excluded or exempt from the application of the first conduct rule, as a result of one or more exclusions or exemptions in the Ordinance.[4]

1.8 The Commission is only required to consider applications for a decision in certain circumstances, which the Commission refers to as the Suitability Factors.[5] It is not required to consider applications concerning hypothetical questions or agreements.[6]

1.9 Where the Commission considers the application, it may make a decision under section 11(1) of the Ordinance as to whether or not the agreement in question is excluded or exempt from the first conduct rule ("**Decision**"). Before making a Decision, section 10(1) requires the Commission to publish notice of the application through the Internet and in any other manner the Commission considers appropriate, and to consider any representations that are made to the Commission within a specified period.

1.10 If the Commission's Decision confirms that an exclusion or exemption applies to a particular agreement, by virtue of section 12, each undertaking specified in the Decision is then immune from any action under the Ordinance with regard to that agreement. Section 34 requires such Decisions to be published on a register kept by the Commission.

---

[4] Section 24 of the Ordinance permits undertakings to apply to the Commission for a decision as to whether or not conduct is excluded or exempt from the application of the second conduct rule.

[5] Under section 9(2) of the Ordinance, the Commission is only required to consider an application if (a) the application poses novel or unresolved questions of wider importance or public interest as to the application of an exclusion or exemption; (b) there is no clarification on that exclusion or exemption in existing case law or decisions of the Commission; and (c) it is possible to make a decision on the basis of the information provided. For further details on the Commission's interpretation of the Suitability Factors, see the Commission's *Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders* ("**Applications Guideline**"), paragraphs 6.4 to 6.9.

[6] See further section 9(3) of the Ordinance and Applications Guideline, paragraphs 6.10 to 6.11.

1.11 There is, however, no need for a prior Decision of the Commission in order for undertakings to rely on the applicable exclusions and exemptions in the Ordinance. Undertakings may self-assess the legality of their agreements having regard to the first conduct rule and the exclusions and exemptions from those rules.[7]

1.12 Where the Commission decides that a particular agreement is not excluded or exempt from the first conduct rule, this does not necessarily mean that the Commission has formed a view on whether it has reasonable cause to believe that the agreement in question contravenes the first conduct rule.[8]

1.13 Further details as to the Commission's processes regarding applications for a decision are set out in the Commission's *Guideline on Applications for a Decision under Sections 9 and 24 (Exclusions and Exemptions) and Section 15 Block Exemption Orders*, referred to below as the "**Applications Guideline**".

Handling of the Application

Procedural steps

1.14 On 31 January 2019, the HKAPI submitted the Application to the Commission by way of Form AD. Prior to this, the Commission engaged in an Initial Consultation with HKAPI over a number of months, pursuant to the process envisaged in paragraphs 6.12 to 6.15 of the Applications Guideline.

1.15 On 1 February, in accordance with the procedure set out in section 10 of the Ordinance, the Commission:

(a) published notice of the Application, along with a non-confidential version of the Form AD submitted by the Applicant, on its website; and

(b) invited representations on the Application from interested parties on or before 29 March 2019.[9]

1.16 The Commission received a total of eight representations, including one confidential representation. The seven non-confidential representations have been

[7] Applications Guideline, paragraph 5.6.

[8] Applications Guideline, paragraph 9.6.

[9] See the Commission's *Notice issued under section 10 of the Competition Ordinance of an application for a decision in relation to a proposed pharmaceutical sales survey*. In addition to publishing the notice, the Commission specifically invited 40 parties which it considered likely to be affected by the Application to provide representations.

published on the Commission's website. The representations are also summarised in paragraph 3.5 below.

1.17 During its assessment of the Application, the Commission also:

(a) issued requests for information ("**RFIs**") to the Applicant aimed at clarifying, and seeking further information on, various aspects of the Application; and

(b) made enquiries of particular organisations, including relating to the claims in the Application regarding the data they offer for purchase or use in the performance of their functions.[10]

1.18 Finally, towards the end of its assessment, the Commission held a meeting with the HKAPI to discuss views on the merits of the Application. Subsequent to this, the HKAPI provided a written supplementary submission on the views expressed ("**supplementary submission**").

Basis for considering Application and issuing Decision

1.19 Upon receiving the Application, the Commission had regard to the Suitability Factors and, on the basis that the Suitability Factors were met, decided to consider the Application. Having now considered and consulted on the Application, the Commission considers it appropriate to issue a Decision under section 11(1) of the Ordinance.

The Decision and Statement of Reasons

1.20 Taking account of the information and arguments contained in the Application, the representations received on the Application and enquiries by the Commission of third parties, and the Applicant's responses to Commission RFIs and its supplementary submission, the Commission has made a Decision on the Application. The Decision is that the Proposed Survey is not excluded from the application of the first conduct rule by or as a result of the efficiency exclusion.

1.21 As set out in this Statement of Reasons, however, the Commission also considers that the sharing of some of the information intended to be included in the Proposed Survey would be unlikely to give rise to competition concerns under the first conduct rule in any event. To increase clarity in this respect, the Commission

[10] The Commission received responses to such enquiries from [...], the Drug Office of the Department of Health, the Hospital Authority, IQVIA and A.S. Watson Retail (HK) Limited.

sets out in some detail its assessment of the possible competition concerns in Part 3.2 below. A summary of the specific types of data which would and would not be likely to give rise to competition concerns is provided in paragraph 3.56.

1.22 In accordance with section 34 of the Ordinance, the Decision is published in the Commission's Register of Decisions and Block Exemption Orders, which is available on the Commission's website and at its offices during ordinary business hours.

1.23 This Statement of Reasons sets out the Commission's reasons for the Decision and other related matters. The remainder of the document sets out:

(a) relevant factual details relating to the Applicant and other relevant parties, the Proposed Survey and the concerned products (Part 2);

(b) the Commission's assessment of the Application (Part 3), including:

(i) its consideration of the representations received;

(ii) the possible competition concerns to which the Proposed Survey could give rise under the first conduct rule;

(iii) the application of the efficiency exclusion to the Proposed Survey; and

(iv) the relevance of a potential effect on competition for market research services.

2 RELEVANT FACTUAL DETAILS

The Applicant and other relevant parties

2.1 The Applicant is an industry association, which comprises 34 full members as at July 2019,[11] all of which are companies engaged in the research and/or development of pharmaceuticals. According to the Applicant's website, the HKAPI members provide over 70 per cent of the prescription medicines in Hong Kong.

2.2 The full members are as follows:

(i) A. Menarini Hong Kong Limited;
(ii) AbbVie Limited;
(iii) Amgen Asia Holding Limited;
(iv) Astellas Pharma Hong Kong Company Limited;
(v) Astrazeneca Hong Kong Limited;
(vi) B. Braun Medical (H.K.) Ltd;
(vii) Baxter Healthcare Ltd;
(viii) Bayer HealthCare Ltd;
(ix) Boehringer Ingelheim (HK) Ltd;
(x) Bristol-Myers Squibb Pharma (HK) Limited;
(xi) CSL Behring Asia Pacific Limited;
(xii) Daiichi Sankyo Hong Kong Limited;
(xiii) Eisai (HK) Co Ltd;
(xiv) Eli Lilly Asia Inc;
(xv) Ferring Pharmaceuticals Ltd;
(xvi) Gilead Sciences Hong Kong Limited;
(xvii) GlaxoSmithKline Limited;
(xviii) Ipsen Hong Kong;
(xix) JANSSEN, a division of Johnson & Johnson (HK) Ltd.;
(xx) Kyowa Hakko Kirin (Hong Kong) Co., Ltd.;
(xxi) Medinova AG;
(xxii) Medreich Far East Limited;
(xxiii) Merck Pharmaceutical (HK) Limited;
(xxiv) Merck Sharp & Dohme (Asia) Ltd;
(xxv) Mundipharma (Hong Kong) Limited;
(xxvi) Novartis Pharmaceuticals (HK) Ltd;
(xxvii) Novo Nordisk Hong Kong Ltd;
(xxviii) Otsuka Pharmaceutical (H.K.) Ltd;
(xxix) Reckitt Benckiser Hong Kong Ltd
(xxx) Roche Hong Kong Limited;

[11] See HKAPI website at http://www.hkapi.hk/membership.asp (last accessed on 25 September 2019). The 38 members of the HKAPI as of the date of Application are listed in Annex 2 to the Application.

(xxxi) Sanofi-Aventis Hong Kong Limited;
(xxxii) Servier Hong Kong Ltd;
(xxxiii) Takeda Pharmaceuticals (Hong Kong) Limited; and
(xxxiv) UCB Pharma (HK) Ltd.

2.3 The Applicant also had 29 associate members as at July 2019, which are companies engaged in providing services to the pharmaceutical industry. Academics and non-governmental organisations may also be members of the HKAPI.

2.4 According to the Application, the Applicant provides its members with information on relevant matters relating to the development of the healthcare sector in Hong Kong. It also engages in economic activities in Hong Kong through a number of services, including the provision of training and educational courses and organising events for members' employees and healthcare professionals. Based on these economic activities, the Applicant makes the Application in its capacity as an undertaking.[12]

2.5 The Application states that some of the Applicants' members can be considered to be 'other relevant parties' for the purposes of the section 2.4 of the Form AD, on the basis that they will become 'parties to the agreement in question' and/or 'involved in the conduct' within the meaning of that section if and when they choose to participate in the Proposed Survey. However, the Applicant indicates it is not yet in a position to ascertain which of its members would participate in the Proposed Survey, as members would only be in a position to decide to participate after seeing the outcome of the Application.

Proposed Survey

2.6 The Proposed Survey will involve the Applicant:

(a) collecting, collating and processing raw data from pharmaceutical companies on their sales of pharmaceutical products through a "**Market Sales Survey**", and

(b) producing and publishing a "**Sales Survey Report**", which will be available for purchase.

Market Sales Survey

2.7 The Applicant plans to operate the Market Sales Survey as follows:

[12] Section 9(1) of the Ordinance envisages that a party applying to the Commission for a decision is an 'undertaking', and does not refer to an 'association of undertakings'.

(a) The Applicant will ask its members that have sales of pharmaceutical products in Hong Kong and Macau to provide to it on a voluntary basis actual sales data by value and by pharmaceutical product each quarter. Members will provide the information in a manner which does not contain information on prices, sales volume, stock keeping units or patient numbers. Pharmaceutical companies who are not members of the Applicant may also participate in the Market Sales Survey in a similar manner, subject to prior agreement by the Applicant. Companies participating in the Market Sales Survey are together referred to as "**Participant Companies**"; and

(b) The Applicant will assign a member of its staff to collect the sales data for the relevant quarter of the year from all Participant Companies, which will be used only for the purposes of producing the Sales Survey Report and kept securely and in strict confidence by the Applicant.[13]

Sales Survey Report

2.8 After the Market Sales Survey has been conducted, the relevant HKAPI staff member will compile and process the collected data in order to prepare the Sales Survey Report.

Formulation of data

2.9 The data in the Sales Survey Report will indicate:

(a) the value of sales (in HK$ terms) in a number of different formulations – as explained further in the following paragraph – to four sectors. The sectors are as follows: 'Government',[14] 'Private',[15] 'Trade'[16] and 'Macau'[17] (together, "**Sectors**"). According to the Application, these four Sectors correspond to the key sectors in Hong Kong that are widely recognised by the pharmaceutical industry; and

[13] Application, paragraph 25(a) and (b).

[14] This sector is said to cover data in respect of sales to hospitals and clinics operated by the Hospital Authority or Department of Health in Hong Kong.

[15] This sector is said to cover data in respect of sales to private hospitals, clinics and doctors in Hong Kong that are not covered by the 'Government' sector.

[16] This sector is said to cover data in respect of sales to pharmacies, drug stores and retailers in Hong Kong.

[17] This sector is said to cover data in respect of sales to all distribution channels in Macau.

(b) the percentage change as between the value of sales for the quarter covered by the Report and the corresponding quarter in the previous year.

2.10 The Applicant has provided a sample indicating the different formulations for the value of sales data to be included in the Sales Survey Report, which is reproduced in the **Annex** to this Statement of Reasons[18]. The relevant formulations will indicate the following:

(a) the total sales of each of the Participant Companies to each of the four Sectors ("**Company Total Sales Data**").[19] The Sales Survey Report will separately indicate the Participant Company's total sales figures for all products; prescription products only; and over-the-counter ("**OTC**") products only;

(b) the total sales of the Participant Companies' products falling within individual 'ATC3' classes to each of the Sectors ("**ATC3 Total Sales Data**").[20] The ATC3 classification refers to the third level of the Anatomical Therapeutic Chemical ("**ATC**") classification system.[21] Again, the Sales Survey Report will separately indicate the total sales figures within a particular ATC3 class for all products; prescription products only; and OTC products only; and

(c) the sales of specific, named products to each of the Sectors, grouped according to the relevant Participant Company and separately according to the relevant ATC3 class ("**Product Level Sales Data**").[22]

Publication and purchase of the Sales Survey Report

2.11 It is proposed that the Sales Survey Report would be published on a quarterly basis. According to the Applicant, by the time the Sales Survey Report is prepared, it will be at least a month after the relevant date of the collected data.[23] For example,

[18] In their RFI response, submitted on 9 April 2019, the Applicant explained that sheet 3 of Annex 6 should have been titled "Sales (HK$) by Company covering (Jan-Mar 2017) (Over the Counter)".

[19] For present purposes, Company Total Sales Data refers more specifically to the data formulation as set out in Sheets 1, 2, 3 and 7 of Application, Annex 6.

[20] For present purposes, ATC3 Total Sales Data refers more specifically to the data formulation as set out in Sheets 4 to 6 of Application, Annex 6.

[21] See further paragraphs 2.20 and 2.21 below.

[22] For present purposes, Product Level Sales Data refers more specifically to the data formulation as set out in Sheets 8 to 12 of Application, Annex 6.

[23] Application, paragraph 26(c).

for data collected for the quarter from January to March, the corresponding Sales Survey Report would be released in April.

2.12 The Applicant plans to sell the Sales Survey Report to any person (whether or not they are a member of the Applicant) on payment of what it indicates will be a reasonable fee. More specifically, the Applicant intends to offer the Sales Survey Report for free to non-profit making non-members, while for others, the fee will range from […] depending on whether or not the purchaser (i) is a HKAPI member; and (ii) provides sales data in the Market Sales Survey.[24] The Application indicates that such fees are set on a 'not-for-profit' basis, i.e., at a level where the revenue from sales of the Sales Survey Report would cover the Applicant's workforce and operational costs of carrying out the Market Sales Survey.[25] Customers may purchase the Sales Survey Report on a subscription or *ad hoc* basis.

Past Surveys

2.13 The HKAPI previously carried out pharmaceutical sales surveys in a similar manner to the Proposed Survey ("**Past Surveys**"), but suspended its Past Surveys in 2015 prior to full commencement of the Ordinance, […].[26]

2.14 In the period between 2011 and 2015, over […] of the HKAPI's full members consistently both participated in the Market Sales Survey and purchased the Sales Survey Report.[27]

Concerned products

2.15 The Proposed Survey would involve suppliers of pharmaceutical products in Hong Kong sharing their respective data on the sales of Western medicine in Hong Kong (and Macau).

2.16 According to the Application, the Proposed Survey may also affect the provision of market research services ("**MRS**") for pharmaceutical products.[28]

[24] RFI response, submitted on 9 April 2019, paragraph 28.

[25] Application, paragraph 29.

[26] Application, paragraph 37.

[27] RFI response, submitted on 9 April 2019, paragraph 1 and Appendix 1.

[28] See the Applicant's submissions on MRS for pharmaceutical products in Hong Kong as being a plausible alternative relevant market for the purposes of the Application (Application, Annex 8, paragraphs 11 to 21).

Legal and regulatory framework for the sale of pharmaceutical products in Hong Kong

2.17 All pharmaceutical products sold in Hong Kong must be registered with the Pharmacy and Poisons Board.[29] The Pharmacy and Poisons Ordinance (Cap. 138) also requires the key parties in the pharmaceutical product supply chain – manufacturers, wholesalers, importers and exporters, and retailers – to hold particular licences.[30]

2.18 Pharmaceutical products may be sold either OTC, being products that are generally purchased without a prescription, or by prescription, being products that are primarily prescribed by a doctor.

2.19 Most pharmaceutical products sold in Hong Kong are imported from outside of Hong Kong. The local pharmaceutical industry is primarily made up of companies producing generic products for local (Hong Kong) consumption.

Types of pharmaceutical products

2.20 As noted above, the ATC division of medicines by therapeutic use is commonly used to classify pharmaceutical products.[31] The first level of the ATC code (ATC1) indicates the part of the human body the product intends to address and comprises 14 general areas.[32] The further levels of the code (ATC2, ATC3 etc.) contain sub-sets of the previous level.

2.21 The World Health Organisation provides the following example of the classification of metformin, used to treat type 2 diabetes, to illustrate the structure of the code:

> *"A Alimentary tract and metabolism*
> *(1st level, anatomical main group)*

[29] Section 36(1) of the Pharmacy and Poisons Regulations (Cap. 138A).

[30] Further information on the regulatory regime for pharmaceutical products is available on the website of the Drug Office, https://www.drugoffice.gov.hk/eps/do/en/pharmaceutical_trade/guidelines_forms/faq.html (last accessed on 25 September 2019).

[31] As the Application notes, the ATC system is devised by the European Pharmaceutical Marketing Research Association ("**EphMRA**"), while Hong Kong uses the World Health Organisation's ATC system, which is an extension and modification of EphMRA's system. See Application, Annex 8, paragraphs 4 to 6.

[32] The 14 ATC1 classifications (under the WHO system) are as follows: A: Alimentary tract and metabolism; B: Blood and blood forming organs; C: Cardiovascular system; D: Dermatologicals; G; Genito urinary system and sex hormones; H: Systemic hormonal preparations, excl. sex hormones and insulins; J: Antiinfectives for systemic use; L: Antineoplastic and immunomodulating agents; M: Musculo-skeletal system; N: Nervous system; P: Antiparasitic products, insecticides and repellents; R: Respiratory system; S: Sensory organs; and V: Various.

A10	*Drugs used in diabetes* *(2nd level, therapeutic subgroup)*
A10B	*Blood glucose lowering drugs, excl. insulins* *(3rd level, pharmacological subgroup)*
A10BA	*Biguanides* *(4th level, chemical subgroup)*
A10BA02	*metformin* *(5th level, chemical substance)*."[33]

2.22 A particular product may be sold in different galenic forms, which refers to the dosages, pharmaceutical forms and routes of administration of the product. For example, a product might be available in liquid, capsule and tablet form of varying strengths, and be capable of being taken topically, orally or intravenously, while in each case the active ingredient of the product would remain the same.

Pharmaceutical product sector in Hong Kong

Suppliers

2.23 The principal suppliers of pharmaceutical products in Hong Kong are multinational companies, which manufacture their products overseas in jurisdictions such as the US, the EU and Japan, and import the products into Hong Kong. As mentioned, local firms are typically small companies producing generic products for the Hong Kong market.

2.24 The following table sets out data from 2018 on the top 10 company groups active in supplying pharmaceutical products in Hong Kong, along with an indication of whether the company is a current member of the HKAPI.

[33] WHO Collaborating Centre for Drug Statistics Methodology and Norwegian Institute of Public Health, Guidelines for ATC classification and DDD assignment (2019), page 15.

Table 2.1: Top 10 suppliers of pharmaceutical products in Hong Kong, 2018

Rank	Company	Sales in HK$ (million)[34]	Market share (%)	HKAPI member?[35]
1	Merck Sharp & Dohme	$1,570	12.0%	Y
2	Pfizer	$1,250	9.6%	N
3	Roche	$914	7.0%	Y
4	Novartis	$886	6.8%	Y
5	GlaxoSmithKline	$869	6.6%	Y
6	Sanofi	$644	4.9%	Y
7	AstraZeneca	$625	4.8%	Y
8	Johnson & Johnson	$491	3.8%	Y
9	Bristol-Meyers Squibb	$451	3.5%	Y
10	Gilead Sciences	$411	3.1%	Y
-	**Total top 10**	$8,111	62.1%	-

Source: IMS[36]

2.25 This shows that nine of the top 10 suppliers in Hong Kong were current HKAPI members, accounting for 52.5% of the sale of pharmaceutical products in 2018. The industry has been characterised by consolidation in recent years, through a number of significant mergers and acquisitions at the global level.[37]

2.26 Pharmaceutical companies which import products into Hong Kong generally rely on distributors to distribute their products. Such distributors typically offer the specialist facilities required for storage and distribution of pharmaceutical products, which may be temperature-sensitive.

Customers

2.27 Suppliers of pharmaceutical products sell to three broad sectors in Hong Kong:

(a) The public healthcare sector, comprising two purchasers of pharmaceutical products, namely the Hospital Authority ("**HA**") and

[34] This figure represents the Moving Annual Total (MAT) for Q2 2018 in respect of Retail and Hospital Sector Sales at Ex-Manufacturer Prices.

[35] The specific HKAPI members are subsidiaries within the company group indicated.

[36] The company operates in Hong Kong through IMS Chinametrik Ltd, though at a global level is now known as IQVIA. For ease of reference, this Statement of Reasons refers to the company as IMS.

[37] See the examples in the Application, Annex 8, paragraph 59.

the Department of Health ("**DH**"). The HA is responsible for managing Hong Kong's 43 hospitals and institutions, 49 specialist out-patient clinics, and 73 general out-patient clinics.[38] For the procurement of most products, it holds a tender for the supply of a particular volume of the product over a particular period, while individual HA hospitals then directly place orders under the tender contract with the supplier and receive the products. HA hospitals dispense pharmaceutical products to HA patients according to HA doctors' prescriptions only, and do not otherwise sell products to patients or consumers in Hong Kong. The Drug Office of the DH also purchases pharmaceutical products for DH users through tenders and contracts.

(b) The private healthcare sector, which is comprised of private hospitals and clinics and doctors in private practice. According to the Application, such healthcare service providers typically acquire pharmaceutical products by placing individual purchase orders, which are usually fulfilled by distributors for the pharmaceutical companies.

(c) The trade or retail sector, which is made up of registered pharmacies, drug stores and other retailers which are authorised to sell pharmaceutical products. These may sell OTC products and dispense prescription products directly to members of the public.

[38] Hospital Authority website, at https://www.ha.org.hk/visitor/ha_visitor_index.asp?Parent_ID=10004&Content_ID=10008&Ver=HTML (last accessed on 25 September 2019).

3 COMMISSION ASSESSMENT OF THE APPLICATION

3.1 In this Part 3, the Commission assesses whether the Proposed Survey gives rise to possible competition concerns under the first conduct rule and the application of the efficiency exclusion to the Proposed Survey.

3.2 It should be noted at the outset that, although the Proposed Survey will cover sales made in Macau, the HKAPI has indicated that the Application only concerns the application of the Ordinance to activities conducted in Hong Kong.[39] The Commission therefore does not consider below the application of the first conduct rule or the efficiency exclusion to the exchange of information with respect to sales made in Macau.[40]

3.1 REPRESENTATIONS ON THE APPLICATION

3.3 In assessing the Application, the Commission has considered the representations made to it during the section 10 consultation. It is opportune to provide a brief summary of these at this point.

3.4 The Commission received representations from eight parties, including one confidential representation from […]. The seven non-confidential representations are from: (i) A.S. Watson Retail (HK) Limited; (ii) Reckitt Benckiser Hong Kong Limited; (iii) Consumer Council; (iv) The Pharmaceutical Distributors Association of Hong Kong; (v) an anonymous individual; (vi) IQVIA; and (vii) The Society of Hospital Pharmacists of Hong Kong.

3.5 In summary:

(a) The Pharmaceutical Distributors Association of Hong Kong, the anonymous individual and IQVIA indicated they supported the Application, but did not provide any further elaboration.[41]

(b) A.S. Watson Retail (HK) Limited indicated they would not have an interest in subscribing to the Sales Survey Report as its information is not relevant to its business, and could not comment on the proposed benefits of the Proposed Survey.[42]

---

[39] Application, paragraph 24.

[40] For the avoidance of doubt, the Commission takes this position based on the scope of the Application as expressed in paragraph 24 thereof, rather than based on the territorial scope of the first conduct rule, which is as prescribed by section 8 of the Ordinance.

[41] Representations submitted on 26 March 2019, 28 March 2019 and 30 April 2019 respectively.

[42] Representation of A.S. Watson Retail (HK) Limited, 22 February 2019.

(c) Reckitt Benckiser Hong Kong, a member of the HKAPI, indicated it considers sales data are commercially sensitive and should not be circulated by way of trade association survey, and that market surveys organized by independent third parties, such as IMS, Euromonitor, should have sufficient information on companies' commercial activities.[43]

(d) The Consumer Council did not put forward a view on whether a positive decision should be issued or not, but indicated that it considered the information to be exchanged competitively sensitive based on the guidance in the Commission's FCR Guideline, and that the claimed economic efficiencies were merely descriptive and quantifiable analyses were required.[44]

(e) [...][45]

(f) The Society of Hospital Pharmacists of Hong Kong indicated that the Proposed Survey would mainly be of benefit to the HKAPI members themselves, rather than healthcare professionals or others. The Society would prefer to subscribe to IMS data as they are more informative, neutral and available for non-pharmaceutical stakeholders, though charges are "*on the high side*". On the other hand, it considered all sales data would lead to competition between pharmaceutical companies.[46]

3.6 Taken together, the representations do not provide a strong indication one way or another as to whether the Commission should issue a positive Decision regarding the Proposed Survey. They do contain a number of useful indications, however, which have been taken into account in the Commission's views and findings on various claims made in the Application.

3.2 POSSIBLE COMPETITION CONCERNS UNDER THE FIRST CONDUCT RULE

3.7 The first conduct rule in section 6(1) of the Ordinance provides that an undertaking must not:

"*(a) make or give effect to an agreement;*

(b) engage in a concerted practice; or

[43] Representation of Reckitt Benckiser Hong Kong Limited, 19 March 2019.

[44] Representation of the Consumer Council, 25 March 2019.

[45] Confidential representation of [...].

[46] Representation of the Society of Hospital Pharmacists of Hong Kong, 10 May 2019.

(c) as a member of an association of undertakings, make or give effect to a decision of the association,

if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong"(emphasis added).

Decision of an association of undertakings

3.8 As the Application itself notes, the HKAPI may be considered an 'association of undertakings' for the purposes of the first conduct rule.[47] In particular, the members of the HKAPI are engaged in economic activity in Hong Kong and thus constitute undertakings within the meaning of section 2(1) of the Ordinance.

3.9 The Application indicates that the Proposed Survey will be conducted pursuant to […].[48] The Commission proceeds on the basis that such a resolution may be classified as a 'decision' of an association of undertakings.[49]

3.10 The giving effect to the Proposed Survey by the undertaking members of the HKAPI, for example by participating in the Proposed Survey, could thus amount to giving effect to a decision of an association of undertakings under section 6(1)(c) of the Ordinance.

Prevention, restriction or distortion of competition

Introduction

3.11 This section sets out the Commission's 'theory of harm' as to how the Proposed Survey could give rise to competition concerns and then addresses the Applicant's submissions as to why such concerns should in fact be limited.

3.12 While the section discusses in some detail where there are and are not likely to be competition concerns to provide further clarity, this is not to be taken to suggest that such an assessment is necessary to assess the application of exclusions from the Ordinance generally. The Commission also does not conclude on whether the Proposed Survey would give rise to a contravention of the first conduct rule, or take a position on whether the Proposed Survey would have the object or the effect

[47] As noted in paragraph 2.4 above, the HKAPI is also an undertaking in its own right.

[48] Application, paragraph 19 and Confidential Annex 5. […] However, even if these resolutions do not form the basis for the HKAPI to conduct the Proposed Survey, the Proposed Survey could be conducted pursuant to a future 'decision' of the HKAPI or alternatively could be analysed as an agreement or concerted practice by the members of the HKAPI concerning the information to be exchanged under the Proposed Survey. See in this respect FCR Guideline, Hypothetical Example 10 at paragraph 6.40.

[49] FCR Guideline, paragraph 2.35.

of harming competition (although the assessment which follows applies the elements of an effects assessment).

3.13 This is on the basis that, for the purpose of making a Decision, it is not necessary for the Commission to make a finding on whether or not conduct forming the subject of the Application in fact gives rise to a contravention of the first conduct rule (whether by object or effect).[50] Rather, section 11(1) tasks the Commission with deciding whether or not conduct is "*excluded or exempt*" from the first conduct rule, in this case under the efficiency exclusion.[51]

3.14 The remainder of this section addresses:

(a) relevant guidance on the exchange of information generally;

(b) the relevant markets for the assessment of the Proposed Survey;

(c) the Commission's theory of harm;

(d) the application of this theory of harm to the Proposed Survey; and

(e) the mitigating factors put forward by the Applicant.

(a) Relevant guidance on the exchange of information generally

3.15 As indicated in the FCR Guideline, undertakings exchange information on a variety of matters with no risk to the competitive process, and competition is often enhanced through the sharing of information (for example, information on best practices or information which allows firms to better predict how demand is likely to evolve).[52]

3.16 Competition concerns may, however, arise where:

> "*undertakings which are competitors exchange* […] *information which is* ***competitively sensitive information*** […]".

[50] The Applicant's supplementary submission of 25 July 2019 also notes that the Commission is not required to make a determination on whether the Proposed Survey would in fact be a contravention of the first conduct rule.

[51] Case AD/01XX *Code of Banking Practice*, Statement of Reasons of 19 October 2018, paragraph 3.6. See also Applications Guideline, paragraph 9.6 (cited in paragraph 1.12 above). See similarly, Case BE/0004 *Liner shipping*, Statement of Reasons of 8 August 2017, paragraph 4.5.

[52] FCR Guideline, paragraph 6.38.

3.17 In this respect, "*Generally, information relating to price and **quantities** (information concerning **sales**, market shares, **sales to particular customer groups or territories**) is the most competitively sensitive.*"[53]

3.18 The exchange of competitively sensitive information may "*occur directly between competitors or **indirectly through a trade association***."[54]

3.19 The exchange of such information may have either the object or the effect of harming competition (though, as noted, the Commission does not express a position on this with respect to the data in the Proposed Survey):

> "*If competitors share information in private on their **future individual intentions or plans** with respect to price* [which includes quantities and thus sales]*, the Commission will likely consider that the agreement to exchange such information has the object of harming competition.*"[55]
>
> "*Where the exchange of information does not have the object of harming competition* […] *whether it might have **anti-competitive effects*** […] *depends on the circumstances of the case including the **characteristics of the market**, the type of information exchanged (whether it is competitively sensitive and how competitively sensitive it is) and other relevant factors.*"[56]

3.20 In the context of an effects assessment,

> "*The **type of information exchanged** and the **structure of the market** in which the information exchange occurs are important factors in the analysis. For example, the exchange of **historical, aggregated and anonymised data** is less likely to harm competition, since the exchange of such information is unlikely to **reduce independent decision-making** by undertakings with regard to their actions in the market*."[57]

3.21 Finally, the exchange of publicly available information, in the sense of information that is equally accessible in terms of the cost of access to all competitors and customers, is unlikely to involve a contravention of the first conduct rule. Where information is exchanged in public so that all parties have access to the information (including consumers), harmful effects are less likely.[58]

---

[53] FCR Guideline, paragraph 6.39 (emphasis added).

[54] FCR Guideline, paragraph 6.41 (emphasis added).

[55] FCR Guideline, paragraph 6.40 (emphasis added).

[56] FCR Guideline, paragraph 6.45 (emphasis added).

[57] FCR Guideline, paragraph 6.47 (emphasis added).

[58] FCR Guideline, paragraphs 6.48 and 6.49.

(b) Relevant markets for the assessment of the Proposed Survey

3.22 The Applicant submits that the market for pharmaceutical products (more specifically Western medicine) in Hong Kong is the relevant market for the purposes of the Application.[59]

3.23 At the same time, it has also referred to the fact that foreign competition authorities such as the European Commission have analysed competition on the basis of the ATC3 level as a starting point. It notes decisions of foreign authorities that considered the ATC4 level as a possible alternative to address competition issues at the molecule level, and those that have also explored galenic form as a potential narrower basis for market definition within the ATC3/ATC4 levels.[60]

3.24 It submits that ATC3 level should be most appropriate for the purposes of market definition in the Application and for the purposes of addressing any potential concerns arising from the Proposed Survey. This is on the basis that the Proposed Survey does not specify data at the ATC4 level (or by galenic form). It submits that the precise market definition can, however, ultimately be left open.[61]

3.25 The Commission does not accept that the relevant market could comprise pharmaceutical products in Hong Kong generally, as the Application suggests, since this would cover products with vastly differing therapeutic indications and characteristics.

3.26 However, it agrees with the Applicant that the definition of the relevant product market can ultimately be left open for the purposes of its assessment of competition concerns under the first conduct rule. This is on the basis that, for purposes of this Application, the Commission's primary concern is with the exchange of data relating to specific competing products. Since the Proposed Survey will include data at the level of specific products (i.e., Product Level Sales Data), grouped by company and ATC3 level, these concerns apply regardless of the precise market definition for those products.

3.27 By way of illustration, an ATC3 class may be sub-divided into a number of ATC4 classes. The Proposed Survey would group data according to ATC3 class (and separately by company) and thus include data on any and all products within the ATC3 class of the Participant Companies. From the perspective of a specific product included in the Proposed Survey, the relevant market definition may be for its particular ATC4 class, if the products in the other ATC4 classes are not substitutable. However, since the Product Level Sales Data in the Proposed Survey could well

[59] Application, Annex 8, paragraph 1.

[60] Application, Annex 8, paragraph 5.

[61] Application, Annex 8, paragraphs 7 and 8.

include products from the same ATC4 class within the ATC3 class, the risk of the exchange of competitively sensitive information as between competing products continues to apply.

3.28 This is not to say that an ATC3 class could not constitute the relevant market definition for a particular product. In the decisions of the European Commission cited by the Applicant, there are several examples where the European Commission concluded that the appropriate product market definition was for the ATC3 class, without any further sub-division being necessary.[62]

3.29 Further and in any event, the Commission is not in a position to identify specific relevant markets for the products whose data are included in the Proposed Survey. It is not aware of, and cannot know, the specific products that might be included in the Proposed Survey in the future. It also does not have complete information on which specific products have relevantly differentiating galenic formulations or do not compete at the ATC3 level.

(c) The Commission's theory of harm

3.30 The Commission's theory of harm is that the Proposed Survey could permit the exchange of potentially competitively sensitive information between competing manufacturers of pharmaceutical products.

3.31 This could artificially enhance transparency on the market and reduce 'independent decision-making' by undertakings competing with respect to the products in the Proposed Survey, within the meaning of the FCR Guideline. Put differently, the exchange of the information could remove the inherent uncertainty between undertakings in competitive markets.[63]

3.32 In particular, to the extent that the Proposed Survey permits product-specific data to be directly or indirectly discerned or robustly estimated, it could:

(a) *Soften competition, by decreasing the incentives of undertakings selling the competing products to compete vigorously.* For example, a decrease in the value of sales of a particular Participant Company ("**C1**")'s product relative to the sales of its competitors may indicate, all other things being equal, that C1 has increased its price. By observing such a decrease in value of sales, a competing undertaking

[62] The European Commission has identified the following relevant product markets at the ATC3 level: A5B: Hepatic protectors and lipotropics (Case COMP/M.5253 *Sanofi-Aventis/Zentiva*, decision of 4 February 2009, paragraph 54); C4A: Cerebral and peripheral vasodilators available on prescription (*Sanofi-Aventis/Zentiva*, paragraph 106); and S1K: Ocular lubricants and artificial tears (Case COMP/M.5778 *Novartis/Alcon*, Commission decision of 9 August 2010, paragraph 221).

[63] See in this respect FCR Guideline, Hypothetical Example 10.

may have greater confidence to increase its own price for its rival product without risking a loss of sales (i.e., as it will not be pricing above a competitor). The larger C1's value of sales, the greater will be the confidence of its competitors that they can raise their prices.

(b) *Facilitate explicit or tacit coordination by competing undertakings*. The product-related data in the Proposed Survey could assist undertakings to achieve a common understanding to sell their products at particular prices or to allocate the market on the basis of customer groups or geographic areas – even without an explicit agreement on coordination. In particular, the data could be used by the coordinating undertakings to monitor each other's activities to verify whether any of those undertakings is deviating from a particular coordinated outcome. For example:

(i) an increase in a Participant Company's relative value of sales could be suggestive of that undertaking decreasing its price contrary to a particular price coordination arrangement/understanding; and

(ii) an increase in a Participant Company's sales to a particular customer group could be suggestive of the firm deviating from a market allocation arrangement or understanding,

especially in the absence of a change in overall demand.

3.33 The Commission raised similar concerns regarding the exchange of competitively sensitive information on costs, capacity and vessel deployment plans by competing liner shipping companies in its assessment of the liner shipping block exemption application.[64]

(d) Assessment of the theory of harm in relation to the Proposed Survey

Potential competitive sensitivity of the Proposed Survey data

3.34 The Commission accepts the Applicant's submission that the data do not contain information on prices, sales volumes or quantities, stock keeping units or patient numbers, and notes that the information will in principle be shared in public within the meaning of the FCR Guideline (since the Sales Survey Report will be available to any purchaser).

[64] Case BE/0004 *Liner shipping,* Statement of Reasons of 8 August 2017, paragraph 5.26.

3.35 Nonetheless, it considers that certain of the data intended to be included in the Proposed Survey could in principle be of significant competitive sensitivity, on the basis that:

(a) the data relate to value of sales, information which, as the FCR Guideline notes, is in itself among the most competitively sensitive;

(b) the data would not be anonymised to remove individual company or product names and, as will be further discussed below, would be very recent and, for some categories, insufficiently aggregated to allay concerns. It could not be considered "*historical, aggregated and anonymised data*" per the FCR Guideline; and

(c) the data would appear to be confidential, to the extent they had already entered the public domain for a particular reason. By way of illustration, the representation of Reckitt Benckiser indicated that sales data are considered "*confidential and commercially sensitive information*" in its organisation.[65]

Categories of information in the Proposed Survey

3.36 As noted previously, competition concerns could arise to the extent that the Proposed Survey would permit competitively sensitive, product-specific data to be directly or indirectly discerned or robustly estimated by competing manufacturers of pharmaceutical products.

3.37 Taking the three categories of Proposed Survey data in turn,

(a) *Product Level Sales Data*. The inclusion of this information in the Proposed Survey is the most likely to give rise to competition concerns, as it would allow direct monitoring by undertakings of the sales of competing products. The information would thus be capable of decreasing competing undertakings' incentives to compete or facilitating coordination among them.

(b) *Company Total Sales Data.* Such information is generally unlikely to relate to or permit identification of sales of any particular product and would thus be too general to be capable of decreasing incentives to compete or facilitate coordination. Accordingly, its inclusion in the Proposed Survey would be unlikely to give rise to competition concerns. One exception is where only a limited number of products of a Participant Company are included in the Survey. The Commission considers that competition concerns could arise where three or fewer

[65] Representation of Reckitt Benckiser Hong Kong Limited, 19 March 2019, point 3.

products of a Participant Company comprise the relevant Company Total Sales Data.[66] Competition concerns would be even more likely in such cases if a large proportion of a Participant Company's sales were accounted for by one product.

(c) *ATC3 Total Sales Data.* If Product Level Sales Data were not included in the Proposed Survey, the Commission considers ATC3 Total Sales Data to be in most cases too general to give rise to competition concerns. An exception would be where on the value of sales figure for a particular ATC3 class comprises the products of only a very limited number of Participant Companies. In such cases, the potential competition concerns could be the same or almost as acute as with Product Level Sales Data. For these purposes, to avoid concerns, the Commission considers that:

(i) Where only one Participant Company has contributed value of sales data for a particular ATC3 class, the ATC3 Total Sales Data should comprise at least two products of that Participant Company. Otherwise, if a non-Participant Company competing with respect to that product knew that the ATC3 Total Sales Data comprised the single product of the Participant Company,[67] they could effectively obtain the Participant Company's Product Level Sales Data;

(ii) Where two Participant Companies have contributed value of sales data for a particular ATC3 class, the ATC3 Total Sales Data should comprise at least two products of both Participant Companies. Otherwise, if an ATC3 class comprised a single product of one Participant Company ("**C1**") and multiple products of a second Participant Company ("**C2**"), C2 could derive the value of sales of C1's product with knowledge of the sales of its own products;

(iii) While the Commission acknowledges in this example that the products of C1 and C2 in their particular ATC3 class might not necessarily be in competition with each other,[68] as noted, it is

[66] The Commission understands that, in the case of the Past Survey for the first quarter of 2015, there was no Participant Company for which Company Total Sales Data included three or fewer products.

[67] This could be the case, for example, if they were the only other manufacturer of a product in that ATC3 class in Hong Kong.

[68] For example, were competition to take place at the ATC4 or galenic level, per the Applicant's submissions on market definition and the examples of 'wide' ATC3 classes it provided. See further paragraph 3.23 above; and RFI response, submitted on 9 April 2019, paragraphs 10, 11 and Appendix 7.

unable to make a market definition assessment for the products to be included in the Proposed Survey. Accordingly, for the purpose of giving an indication of where competition concerns will be *avoided*, it is unable to include ATC3 Total Sales Data comprising fewer than the products and/or Participant Companies mentioned above in that indication.

3.38 A summary of these indicative thresholds is provided in paragraph 3.56 below. The Commission notes, for the avoidance of doubt, that the assessment of competition concerns requires consideration of the context of the exchange of information and can differ depending on the products, markets and characteristics of the information exchange in question. Therefore, the indicative thresholds and competition concerns outlined above may not apply to the exchange of information in other contexts.

Market coverage and market concentration

3.39 The potential competition concerns are heightened when, in line with the FCR Guideline, the characteristics of the markets in which the information exchange occurs are considered.

3.40 The Commission does not make a full assessment of the characteristics of the relevant markets in this instance, in the absence, as noted in paragraph 3.29 above, of full product and market information. Nonetheless, the information available to the Commission suggests that a large proportion of sales in the pharmaceutical sector in Hong Kong could be covered by the Proposed Survey, and a number of the specific markets it could cover may be highly concentrated.

3.41 *First,* with respect to the proportion of the pharmaceutical sector covered, it is not possible to determine this proportion precisely, since the identity of the Participant Companies is not yet known and may change over time. However, it is clear that the companies which could participate would include those providing over 70% of prescription medicines in Hong Kong (i.e., the HKAPI full members).

3.42 In addition, the Past Surveys provide an indication that a large proportion of the pharmaceutical product sector could be covered by the Proposed Survey. By way of illustration:

(a) the Applicant understands that the Participant Companies submitted data in respect of all of their sales of pharmaceutical products in Hong Kong in the Past Surveys;

(b) between 2011 and 2015, over […] of the Applicant's members participated in the Market Sales Survey and purchased the Sales Survey Report;

(c) with respect to the survey for the first quarter of 2015 specifically ("**2015 Survey**"), […] of the HKAPI's then […] members participated. They included […] of the top […] pharmaceutical companies in Hong Kong, and those […] companies accounted for over half […] of total sales of pharmaceutical products in Hong Kong, based on the 2015 data available to the Commission.[69]

3.43 The fact that the Proposed Survey would appear likely to cover a significant proportion of the pharmaceutical product *sector*, suggests a higher likelihood that in any one relevant *market* there will be significant market coverage, though this of course could be subject to exceptions.

3.44 *Second,* with respect to the levels of concentration in the specific markets covered, the information available to the Commission suggests that the Proposed Survey could apply to a number of specific markets that may be highly concentrated.[70] As a point of reference, it notes that a number of specific markets covered by the 2015 Survey would appear to be highly concentrated – unless in a particular market there happened to be a large number of products which were not included in the 2015 Survey. For example, if the relevant product market for particular products in the 2015 Survey were considered to be ATC3-wide, it is notable that, of the […] ATC3 classes included in the 2015 Survey:

(a) […] list only one product;

(b) […] list two or fewer products; and

(c) […] list three or fewer products.[71]

3.45 In summary, the Commission acknowledges that the limitations of its analysis of the characteristics of the market, as set out in paragraph 3.40, mean it is not possible to draw firm and definitive conclusions based on the above. However, taken together, the potentially significant market coverage and market concentration for particular products imply a greater *likelihood* that undertakings would be able to successfully discern the conduct of their competitors through the Proposed Survey data. This could enable them to restrict or distort their competitive conduct accordingly, in the manners outlined in paragraph 3.32 above.

---

[69] Based on information from the Applicant's RFI response, submitted on 9 April 2019, paragraphs 1, 2, 23 and Appendix 1; Application, Annex 2; and IMS, Moving Annual Total (MAT) for Q1 2015, Audited Retail and Hospital Market at Ex-Manufacturer Prices.

[70] While the Commission cannot rule out the possibility of future entry and expansion in such markets, it notes that the durable presence of the major multinational pharmaceutical products is at least consistent with there being lasting market concentration.

[71] Application, Confidential Annex 7.

(e) Mitigating factors raised by the Applicant

Existing IMS data

3.46 As the Applicant notes, the healthcare market research company IMS already offers a range of data on the Hong Kong pharmaceutical market for purchase, including value of sales data. IMS compiles its data from different sources, including from certain pharmaceutical company customers and in-house market research by IMS.

3.47 According to the Applicant, the existing IMS data already provides "*a degree of transparency*" to market information in Hong Kong, such that the Proposed Survey would not increase the risk of competition concerns by any significant extent.[72]

3.48 The Commission notes, however, that it follows from the Applicant's own submissions on the IMS data that, while the Proposed Survey data may in some respects be no more specific than IMS data, it will not replicate that data. The Applicant has submitted that the HKAPI data:

(a) will be complementary to IMS data and "*fill in information gaps*";

(b) is considered more complete than the IMS data, which "*does not cover certain therapeutic areas and sectors in the market*"; and

(c) is more accurate than IMS data, as "*there may be discrepancies between IMS data and actual sales when pharmaceutical companies who subscribe to IMS data compare IMS data with their own sales figures*".[73]

3.49 In light of the foregoing, there are sufficient indications that the Proposed Survey could indeed still artificially enhance transparency in the markets concerned compared to the market situation at the time of the Application. The existing publication of the IMS data therefore does not remove or sufficiently reduces the competition concerns relating to the Proposed Survey.

[72] Application, paragraph 68(c).

[73] Application, paragraphs 49 and 73; RFI response, submitted on 18 April 2019, Appendix 11.

Nature of Proposed Survey data

3.50 The Applicant has referred to various features of the Proposed Survey data in support of its position that it will not affect independent decision-making by pharmaceutical companies with respect to their actions in the market. The Commission finds that these features do not allay its concerns as outlined above.

3.51 *First*, the Applicant has submitted that the data is not forward looking and (in its view) only contains historic sales data.[74] The Commission acknowledges that, as a general proposition, past or current data is less likely to give rise to competition concerns than, for example, the exchange of future pricing intentions. However, the Commission does not consider quarterly sales data with no more than a month's delay to be historical in this instance. It would appear to be sufficiently recent to be capable of being used by undertakings in the manner set out in paragraph 3.32 above, and thus giving rise to the competition concerns identified.

3.52 *Second*, the Applicant contends that the Proposed Survey will not necessarily cover the entirety of all pharmaceutical products in Hong Kong, as industry players may choose not to participate.[75] As already explained, however, the Commission considers that there is a realistic prospect that the Proposed Survey will include data for at least a significant proportion of suppliers for certain products or ATC3 classes. The potential competition concerns in relation to those products or classes is not removed or mitigated by the potential incompleteness or absence of data for other products or therapeutic classes.

3.53 *Third*, the Applicant draws attention to the fact that the Proposed Survey will only distribute sales data on a quarterly basis at least a month after the date of the collected data.[76] In the Commission's view, the quarterly frequency of the exchange, with no more than one month's delay, would still appear capable of softening competition or facilitating monitoring. Potential competition concerns would be all the more likely where the market concerned is characterised by infrequent sales and price changes, so that a change in sales from previous quarter likely continues to contain information relevant to current or future market conditions.

3.54 *Fourth*, the Applicant submits that the data is aggregated across galenic formulations, dosages and package size.[77] The Commission considers that whether or not such aggregation would have a mitigating effect is product specific. In other words, not all products will necessarily be available in different formulations, dosages or package sizes and, even if they were, it is not clear that the differences

[74] Application, paragraph 26(a).

[75] Application, paragraph 26(b).

[76] Application, paragraphs 26(a) and (c).

[77] Application, paragraph 26(d)(i).

would give rise to separate relevant product markets. It is therefore not possible to rule out the prospect of competition concerns based on the alleged aggregation.

3.55 *Fifth and finally*, the Applicant refers to the intention to aggregate the data in the Proposed Survey by sector as well as by 'prescription' and 'OTC' categories.[78] The Commission finds that, with respect to the aggregation by sector, it is true the competition concerns would be even more significant if the values of sales to individual customers were identified. However, given that Product Level Sales Data is intended to be included in the Proposed Survey, the aggregation of customers by sector does little to minimise concerns. Indeed, information on sales to specific sectors could facilitate a market sharing arrangement or understanding (whether explicit or not), and provide a more detailed indication of possible price increases or decreases, as prices may differ according to sector.

Summary of possible competition concerns

3.56 Based on the information available to it and the reasons set out above, the Commission's assessment is that:

(a) the sharing of the following data through the Proposed Survey would be unlikely to give rise to concerns under the first conduct rule:

(i) Company Total Sales Data, provided that the value of sales figure for a Participant Company comprises four or more products; and

(ii) ATC Total Sales Data, provided that the value of sales figure for a particular ATC3 class comprises (i) at least two products; and additionally if the products of only two Participant Companies are included in the ATC3 Total Sales Data, (ii) at least two products of each of the Participant Companies,

(b) the sharing of Product Level Sales Data would be likely to give rise to competition concerns for the purposes of the first conduct rule.

3.3 APPLICATION OF THE ECONOMIC EFFICIENCY EXCLUSION

Legal framework for analysis

3.57 As provided in section 1 of Schedule 1 to the Ordinance, the efficiency exclusion applies where four conditions are met, i.e., the relevant agreement:

"*(a) contributes to–*

[78] Application, paragraph 26(d)(ii) and (iii).

(i) *improving production or distribution; or*

(ii) *promoting technical or economic progress* ["**first condition**"],

while allowing consumers a fair share of the resulting benefit ["**second condition**"]*;*

(b) does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the objectives stated in paragraph (a) ["**third condition**"]*; and*

(c) does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question ["**fourth condition**"]."

3.58 While the efficiency exclusion is stated to relate to an 'agreement', by virtue of section 6(2) of the Ordinance, the exclusion can be considered to apply equally to a decision of an association of undertakings (in this case, the Proposed Survey).[79]

3.59 In addition, the Competition Tribunal ("**Tribunal**") has held:

(a) the conditions of the efficiency exclusion are cumulative so that each condition must be satisfied if the exclusion is to apply;[80] and

(b) the undertaking seeking the benefit of the exclusion bears the persuasive burden of proving that each of the cumulative conditions of the efficiency exclusion is satisfied.[81]

3.60 Further detail on each of the conditions of the efficiency exclusion is provided in the Annex to the FCR Guideline[82] and where relevant in the analysis which follows.

[79] Section 6(2) provides that a provision of the Ordinance which is expressed to apply to or in relation to an agreement is to be read, unless the context otherwise requires, as applying equally to a decision by an association of undertakings (but with any necessary modifications).

[80] *Competition Commission v W. Hing Construction Company Limited* [2019] HKCT 3 ("**W. Hing**"), paragraph 153. See also FCR Guideline, Annex, paragraph 2.5.

[81] *W. Hing*, paragraphs 156 to 204. See also FCR Guideline, Annex, paragraph 2.4; and Case BE/0004 *Liner shipping,* Statement of Reasons of 8 August 2017, paragraph 4.5.

[82] FCR Guideline, Annex, paragraphs 2.6 to 2.21.

First condition: The agreement contributes to improving production or distribution or promoting technical or economic progress

General principles

3.61 The Tribunal has recognised that only objective benefits are taken into account when applying the first condition. This means that the alleged improvement(s) must display appreciable objective advantages of such a characteristic to compensate for the disadvantages which the agreement entails for competition.[83]

3.62 Objective economic efficiencies include cost efficiencies and qualitative efficiencies. Examples of efficiencies related to 'improving production or distribution' include lower costs from longer production or delivery runs, or from changes in methods of production or distribution, improvements in product quality, or increases in the range of products produced. Efficiencies resulting from the promotion of 'technical progress' may include efficiency gains resulting from economies of scale and increased effectiveness in research and development.[84]

3.63 According to the FCR Guideline, an undertaking relying on the efficiency exclusion must provide "*convincing evidence*" under the first condition of each of the following:

> "*(a) the efficiencies, which must be objective in nature;*
>
> *(b) a direct causal link between the efficiencies and the agreement;*
>
> *(c) the likelihood and magnitude of each efficiency;*
>
> *(d) how each efficiency will be achieved; and*
>
> *(e) when the efficiencies will be achieved*."[85]

[83] *W. Hing*, paragraph 213, citing case law of the Court of Justice of the European Union.

[84] FCR Guideline, Annex, paragraphs 2.8, 2.11 and 2.12.

[85] FCR Guideline, Annex, paragraph 2.7.

3.64 The Tribunal has similarly observed that, in the context of an application for a decision under section 9 of the Ordinance, it is for the undertaking to present "*cogent and compelling evidence and arguments in support of its application*".[86]

Commission assessment of claimed efficiencies

3.65 The HKAPI claims the Proposed Survey will give rise to the following five economic efficiencies within the meaning of the first condition:

(a) better, more efficient allocation of stock for existing products;

(b) easier introduction of new products into the market;

(c) enhanced marketing and distribution efforts of pharmaceutical companies;

(d) greater investments in other patient welfare enhancing activities; and

(e) development of public policy, academic and research and development generally.

3.66 For the reasons set out below, the Commission finds that the submissions and evidence provided by the Applicant, both in the Application and subsequently in responses to Commission RFIs, do not amount to "*convincing*" or "*cogent and compelling*" evidence of the claimed efficiencies, as required to satisfy the first condition.

3.67 This is particularly the case given that the suspension of the Past Surveys in 2015 gives rise to a natural counterfactual. The Past Surveys are very similar in form to the Proposed Survey. If the Proposed Survey gives rise to the claimed efficiencies, it could be expected the Past Surveys gave rise to equivalent efficiencies and that there would be evidence as to the absence of such efficiencies following the suspension. To illustrate, if the Past Surveys permitted better, more efficiency allocation of stock, easier introduction of new products to the market, or enhanced marketing and distribution efforts, one might expect evidence of stocking difficulties, failures to launch new products in Hong Kong and ineffective marketing and distribution efforts following the suspension. As will be outlined below, however, the Applicant has not provided sufficient evidence of such difficulties.

3.68 In its supplementary submission, the Applicant criticised the Commission's failure to explain in sufficient detail precisely what further evidence would be required to allow the Commission to come to a different view.[87] The Commission

[86] *W. Hing*, paragraph 171.

[87] Supplementary submission, submitted on 25 July 2019, penultimate paragraph.

notes, however, that it provided the Applicant with opportunities to supplement its efficiency claims with relevant evidence during the Initial Consultation and through its RFIs. It is in any event not in a position to know what specific evidence might exist or be available to the Applicant which could be put forward in support of those claims. As the supplementary submission itself acknowledges, the burden of evidence falls on the Applicant.

Claimed efficiencies relating to (a) better, more efficient allocation of stock of existing products, (b) easier introduction of new products into market, (c) enhanced marketing and distribution efforts by pharmaceutical companies

3.69 The Application articulates these claimed efficiencies as follows:

(a) *Better, more efficient allocation of stock of existing products.* It is claimed that the data in the Sales Survey Report would allow pharmaceutical companies to forecast more accurately the demand of certain Western medicines in Hong Kong. For example, the sales data could be used in quantitative methods of forecasting demand. This in turn is expected to allow for better allocation of stock for existing products, where forecasts are necessary to assess the timing of stocking decisions and the quantities to be ordered. Inability to forecast demand accurately could result in over-stocking of such products, leading to wastage, or understocking of such products, with undesirable consequences for the general public and healthcare providers.[88]

(b) *Easier introduction of new products into market.* It is said that pharmaceutical companies need to understand local treatment trends, needs of customers and the potential to bring better solutions to Hong Kong when it comes to introducing new pharmaceutical products in Hong Kong. This is particularly the case as decisions to introduce new products often take place at the headquarters of pharmaceutical companies, which are typically overseas. Local management of such companies need a basis to demonstrate the commercial potential and feasibility of introducing new products, in order to justify the considerable time and investment required. In this respect, the data in the Sales Survey Report is said to enable market analysis and provide a better understanding of the pharmaceutical market in Hong Kong, including the size of the market and local treatment trends.[89]

[88] Application, paragraphs 46 to 50.

[89] Application, paragraphs 51 to 56.

(c) *Enhanced marketing and distribution efforts by pharmaceutical companies*. According to the Application, the breaking down of data in the Sales Survey Report, for instance in particular therapeutic areas, would allow pharmaceutical companies to analyse the sales performance of their products against that of their competitors. This in turn would allow them to focus their marketing and distribution efforts in particular areas, for example those requiring improvement. Improving the effectiveness of those efforts is said, in turn, to lead to efficiencies in sales and distribution.[90]

3.70 The Commission accepts in theory that data of the kind that would be exchanged in the Proposed Survey might permit better assessment of trends and strength of demand in particular areas, and thus could inform and facilitate stocking, product launch and marketing and distribution decisions. Such claimed efficiencies are in principle capable of falling within the first condition, as they could amount to objective efficiency benefits in the form of 'improvements in production and distribution'.

3.71 However, the material provided by the Applicant to support these efficiency claims was limited to:

(a) assertions in the Application as to the uses to which the data could be put, which are summarised above;

(b) an Annex to the Application setting out the results of the Applicant's requests to company executives of some of the Applicant's members to consider the benefits of the Past Surveys and the drawbacks arising from their suspension;[91] and

(c) details of specific incidents since the suspension of the Past Surveys, provided in the Applicant's responses to RFIs, where it is alleged that the absence of market data played a role in the incident.

3.72 Taking each in turn, the Commission does not consider that the assertions in the Application are in themselves sufficient to substantiate the three claimed efficiencies. Such assertions have been drafted for the purposes of the Application and do not provide an independent, objective source of evidence which the Commission could use to verify the efficiencies.

3.73 Similarly, the company executive views on the benefits of the Past Surveys are insufficient to fulfil the first condition. Those views were specifically obtained by the Applicant for the purposes of the Application, rather than being, for example,

[90] Application, paragraphs 57 and 58.

[91] Application, Annex 13.

statements pre-dating, and made independently of, the Application. The relevant Annex goes no further than confirming that the executives' views are in line with the submissions in the Application as to the first three claimed benefits and the putative difficulties arising from the suspension of Past Surveys. It provides limited evidence from the executives of specific products or incidents where the suspension of the Past Surveys led to disadvantages, the extent of such disadvantages or the precise contributing role of the suspension of the Past Surveys.[92]

3.74 Finally, the Commission does not consider the examples provided in the RFI responses as sufficiently precise and robust to show a direct or indirect causal link between the alleged stocking difficulties or failure to launch new products and the suspension of the Past Surveys.

3.75 The Commission's assessment of the Applicant's examples of alleged stocking difficulties is as follows:

(a) *An increase in the number of hepatitis C cases in Hong Kong*. The Applicant noted that the average annual number of hepatitis C cases in Hong Kong was 30 during the period when the HKAPI did not offer a sales survey (i.e. 2016 to 2018), compared to 9 during the period when the HKAPI's Past Surveys were available (i.e. 2011 to 2015).[93] While acknowledging that there may be a number of factors that would lead to this rise in hepatitis C cases, it indicated that new hepatitis treatments became available globally in the latter period, but were not readily available in Hong Kong. It stated that one explanation for their absence from Hong Kong was the absence of the sales survey, which made it difficult to forecast demand for hepatitis C treatments in Hong Kong.[94]

However, it is unclear to the Commission how a lack of treatments (as opposed to vaccines) could explain an increase in hepatitis C cases after the suspension of the Past Surveys. In addition, no evidence has been provided to support HKAPI's contention that it was the absence of its surveys that led to any unavailability of advanced treatments in Hong Kong. There would in any event appear to be other means of knowing demand for hepatitis treatments than a pharmaceutical sales survey, such as the Government statistics on the incidence of hepatitis cases referred to by the Applicant.

[92] The examples of difficulties around launching new products in Hong Kong that are provided do not name the products in question or other verifiable evidence.

[93] Department of Health, Centre for Health Protection website, https://www.chp.gov.hk/en/static/24012.html (last accessed on 25 September 2019).

[94] RFI response, submitted on 18 April 2019, paragraphs 5 to 8 and Appendix 8.

(b) *A shortage of influenza vaccines in Hong Kong.* The Applicant noted that the average annual number of deaths from influenza in Hong Kong was 370 between 2016 to 2018, compared to 223 between 2011 to 2015.[95] It also provided press articles relating to what it terms a "*severe shortage*" of flu vaccines in the period of 2016 to 2018. It submitted that the Proposed Survey would provide information on past sales trends of influenza vaccines, which together with relevant statistics from the Hong Kong Government, provide pharmaceutical companies with a basis to estimate future needs of such vaccines in Hong Kong.[96]

However, in the Commission's view, even assuming the press materials provided support the proposition that the increase in influenza cases was caused by a shortage of vaccines, the HKAPI has not provided evidence suggesting the shortage of vaccines was caused by an absence of market data such as the HKAPI's Proposed Survey. Given that the Government also produces detailed, weekly statistics on the incidence of influenza in Hong Kong, it is also unclear why the Proposed Survey would be additionally necessary to understand the potential demand for influenza vaccines.

3.76 On the alleged failure to launch new products due to an absence of market data, the Applicant has referred to an example of a […] company commencing supply a rare disease medicine to Hong Kong. The Applicant has told the Commission it understands that the company had not launched the product in Hong Kong as it had no way to understand market demand.[97] However, this is not evidenced in the materials provided in support of this example. Further and in any event, the Applicant has not shown that data on this particular product would have been included in the Proposed Survey and not available elsewhere.

Claim relating to (d) greater investments in other patient welfare enhancing activities

3.77 The Application claims that in light of the cost savings alleged to arise from the better, more efficient allocation of stock, pharmaceutical companies would be encouraged to invest in other consumer welfare enhancing activities, such as new clinical trials, or educational programmes to medical practitioners. Such activities would be to the benefit of patients in Hong Kong.[98]

[95] https://www.chp.gov.hk/en/resources/29/304.html (last accessed on 25 September 2019).

[96] RFI response, submitted on 18 April 2019, paragraphs 9 to 12 and Appendix 9.

[97] RFI response, submitted on 9 April 2019, paragraph 13 and Appendix 4.

[98] Application, paragraphs 59 and 60.

3.78 The Commission finds that, even if the efficiency claim relating to better allocation of stock had been made out to the requisite standard, it is unable to accept this further claim in the absence of any convincing evidence of the alleged cost savings or that they would be used for investment in consumer welfare enhancing activities.

3.79 The Commission also cannot accept the example relating to vaccines for measles, mumps and rubella ("**MMR**") in the RFI response as evidence in support of this claim.[99] The Applicant indicates that the public sector has the benefit of the MMR vaccine under the Hong Kong Childhood Immunisation Programme. It suggests that, as the Sales Survey Report would show sales of the MMR vaccine on a by-sector basis, the Report would allow manufacturers of the vaccine to understand the sales and potential demand for the vaccine coming from the public sector in Hong Kong. In turn, this could attract more manufacturers to invest in Hong Kong and in turn facilitate greater patient welfare.

3.80 In the Commission's opinion, the difficulty with the MMR example is that manufacturers could find out from sources other than the Proposed Survey that the public sector has the benefit of the Immunisation Programme. Given this, it is unclear why there would be a causal link between the Proposed Survey and a better understanding of the strength of demand for the MMR vaccine from the public sector. Even if there were such a link, there is no evidence showing how and why the demand for the MMR vaccine specifically would encourage its manufacturers to invest in other consumer welfare enhancing activities in Hong Kong.

Claim relating to (e) development of public policy, academia and research and development generally

3.81 The Application claims that the Sales Survey Report would provide market data to government or public bodies involved in the procurement of pharmaceutical products, such as the Hospital Authority and InvestHK, to enable them to identify areas requiring public policy efforts in encouraging investment or development. For academics or medical professionals, the Sales Survey Report could allow them to assess the size, conditions and trends of the pharmaceutical markets (and particular segments) for academic research and development purposes.[100]

3.82 The Commission considers that this claim is theoretically possible but that the Applicant has not provided sufficient evidence in support of the claim. There is no evidence probative of, for example, the assertion that Government or public bodies,

[99] RFI response, submitted on 18 April 2019, paragraph 16. The example was also put forward in support of the claim relating to (e) development of public policy, academia and research and development generally and the Commission's findings apply equally to that claim.

[100] Application, paragraphs 61 and 62.

academics or medical professionals subscribed to or otherwise used Past Surveys or would be likely to use the Proposed Survey.

3.83 The Commission also received limited indication in response to its section 10 consultation and other enquiries that the Proposed Survey would be used by any organisations or individuals other than the pharmaceutical companies. The Society of Hospital Pharmacists of Hong Kong suggested in its representation that the claimed benefits would be mainly for pharmaceutical companies, while the benefit for Government, academia and healthcare professionals would be "*very little*".[101]

3.84 Finally, with respect to government and public bodies specifically, the Commission does accept generally that such organisations use healthcare market data in the performance of their functions.[102] However, the Commission's enquiries suggest they would not use the Proposed Survey data specifically themselves. […][103]

Conclusion on the first condition

3.85 For the above reasons, the Commission concludes that the Applicant has not established to the requisite standard that the Proposed Survey would give rise to the five claimed efficiencies. Accordingly, the Applicant has not discharged its burden of proving that the Proposed Survey satisfies the first condition of the efficiency exclusion.

Second, third and fourth conditions

3.86 Since an agreement must fulfil each of the conditions of the efficiency exclusion in order to benefit from the exclusion, it is not necessary to consider whether the remaining conditions are met.

3.87 For completeness, the Commission notes in the paragraphs that follow that, even if it had concluded that the first condition were satisfied, it would have been unable to conclude based on the evidence provided that the third condition ('indispensability') was satisfied in respect of Product Level Sales Data.

3.88 It does not express a position on the second and fourth conditions, save to the extent indicated in Part 3.4 below in relation to the second condition.

[101] Representation of the Society of Hospital Pharmacists, submitted on 10 May 2019, point 8(c).

[102] See the claims in the Application in Annex 8, paragraph 14(b).

[103] Confidential representation from […].

Third condition: The agreement does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the relevant efficiencies

General principles

3.89 The Competition Tribunal has held that the third condition:

> "*means that both the agreement and also the individual restrictions flowing from it must be reasonably necessary for the attainment of the efficiencies… It is therefore relevant to inquire whether the efficiencies could be achieved by the undertakings on their own and, even if an agreement is necessary, whether another less restrictive type of agreement would suffice and whether the individual restrictions resulting from the agreement are each reasonably necessary in order to produce the efficiencies*".[104]

3.90 The FCR Guideline similarly indicates that, for an agreement to satisfy the third condition:

(a) the party seeking to rely on the exclusion must demonstrate that the agreement itself, and each of the individual restrictions contained in the agreement are reasonably necessary to attain the efficiencies;

(b) an individual restriction can be considered indispensable or reasonably necessary if its absence would eliminate or significantly reduce the relevant efficiencies or make it significantly less likely they will materialise; and

(c) a restriction will only be indispensable if there are no other economically practicable and less restrictive means of achieving the efficiencies.[105]

Commission assessment of alleged indispensability

3.91 The exchange of Product Level Sales Data may be characterised as an individual restriction on competition in the context of the Proposed Survey.

3.92 The Applicant has submitted that it is indispensable to include Product Level Sales Data in the Proposed Survey to achieve the five efficiencies claimed. It indicates, by way of example, that aggregating different product brands into a single therapeutic class data entry would not allow undertakings to efficiently assess,

[104] *W. Hing*, paragraph 272.

[105] FCR Guideline, Annex, paragraphs 2.16 and 2.17.

benchmark and analyse their sales performance compared to that of competitors, thus hampering enhanced marketing and distribution efforts.[106]

3.93 The Commission considers that Product Level Sales Data is not reasonably necessary in order to produce the claimed efficiencies for the following reasons.

3.94 *First*, the Applicant has not shown why it is necessary for undertakings to benchmark their sales against those of specific competitors or products (as opposed to, for example, sales in a therapeutic class generally) in order to achieve these efficiencies. The Application expresses the relevant efficiencies in terms of, for example, needing to "*accurately forecast demand trends*",[107] know the "*size of the market*",[108] focus "*market assessment efforts into* ***particular therapeutic areas***",[109] so as to permit better forecasting of stock, introduction of new products, enhanced marketing/distribution efforts etc. Demand trends, the size of the market, and assessment of particular therapeutic areas as a whole would seem to be matters to be assessed by reference to the general, as opposed to the specific.

3.95 *Second*, the Applicant's own submissions suggest that the exchange of ATC3 Total Sales Data would probably suffice. When responding to the Commission's RFI, the Applicant provided further submissions on why it considered it indispensable to exchange ATC3 Total Sales Data and Company Total Sales Data to achieve the efficiencies claimed. In respect of each of these categories of information, it then stated that "*The same can be said in respect of efficiencies … if* [Product Level Sales Data] *is not made available through the Sales Survey Report*."[110] However, the fact that the submissions on the indispensability of exchanging ATC3 Total Sales Data and Product Level Sales Data are the same suggests that exchanging ATC3 Total Sales Data would be a reasonable and less restrictive alternative to Product Level Sales Data.

3.96 As for Company Total Sales Data and ATC3 Total Sales Data, the Applicant has provided somewhat more detailed reasoning and evidence on indispensability. The Commission accepts the Applicant's submissions as to, for example, why data aggregated to the ATC2 (as opposed to ATC3) level would not provide a meaningful reference value or achieve the same claimed efficiencies. The ATC2 level of the WHO's classification system indicates the therapeutic main group (i.e. the main disease groups that the medicine intends to address). As the Applicant notes,

[106] Application, paragraph 68(b).

[107] Application, paragraph 46.

[108] Application, paragraph 51.

[109] Application, paragraph 57.

[110] RFI response, submitted on 18 April 2019, paragraphs 22 and 23.

particular ATC2 classes may cover completely different products for fundamentally different conditions.[111]

3.97 Thus, for present purposes, the Commission concludes only that the inclusion of Product Level Sales Data in the Proposed Survey would not meet the third condition of the efficiency exclusion.

3.4 COMPETITION FOR MARKET RESEARCH SERVICES (MRS)

3.98 The Applicant has put forward a further reason as to why the Proposed Survey should be regarded as pro-competitive, namely that it would increase competition on the market for MRS for pharmaceutical products.

3.99 In particular:

(a) the Applicant believes that MRS have been almost exclusively supplied by IMS since the suspension of Past Surveys. While there may be independent consultants or market research agencies that provide MRS on an ad hoc basis, it is not aware of any other competitor of IMS that provides healthcare MRS in Hong Kong on a regular basis;[112] and

(b) by starting the Proposed Survey, the Applicant would effectively become a new entrant in this possible market, introducing competition into a market that currently only has "*a single player*".[113] Data from IMS and the Proposed Survey would generally be complementary to each other and each may fill in information gaps in the other's data.[114]

3.100 The Society of Hospital Pharmacists also noted that the Proposed Survey "*may increase competition to counteract IMS*".[115]

3.101 The Commission accepts that the Proposed Survey might in principle affect competition in two sets of possible relevant markets, namely the markets for the

[111] By way of illustration, the Applicant referred to Vitamin C and Vitamin B, which although having very different medical indications, are both grouped under A11 at the ATC2 level. Similarly, N7B (anti-smoking) and N7C (treatment of Alzheimer disease) are both under N7 level for Central Nervous System products. RFI response, submitted on 9 April 2019, paragraph 9.

[112] Application, Annex 8, paragraphs 30 to 31.

[113] Application, paragraph 36.

[114] Application, paragraph 73 and Annex 8, paragraphs 32.

[115] Representation of 10 May 2019, point 8e.

sale of pharmaceutical products and the markets for the provisions of MRS for pharmaceutical products.[116]

3.102 The possible competition concerns in relation to the former are discussed above. However, the potential competitive effect on the provision of pharmaceutical product MRS is not relevant to the application of the efficiency exclusion in this case.

3.103 In particular, under the efficiency exclusion, disadvantages to consumers in one market cannot be compensated by efficiencies accrued to consumers in another market, unless the two groups of consumers are substantially the same. As noted in the FCR Guideline, the notion of consumers receiving a 'fair share' of the claimed efficiencies under the second condition of the efficiency exclusion means that "*the benefits* ***accruing to consumers*** *must at a minimum compensate* ***them*** [i.e. those same consumers] *for the actual or likely harm to competition*".[117]

3.104 Applying this to the present case:

(a) the 'consumers' of pharmaceutical products include the Hospital Authority and the hospitals operating under it, private hospitals, clinics and doctors in private practice and the trade sector (comprising for example pharmacies and healthcare retailers) ("**Pharmaceutical Consumers**");

(b) it is these Pharmaceutical Consumers that would be disadvantaged if the Proposed Survey led to, for example, an increase in the prices of particular pharmaceutical products;

(c) by contrast, as the Application notes, the key customers of Healthcare MRS are pharmaceutical companies in Hong Kong.[118] Such pharmaceutical companies, rather than the Pharmaceutical Consumers, would thus be the primary beneficiaries of an increase in competition in healthcare MRS for pharmaceutical products.

3.105 Accordingly, the Commission does not consider the Applicant's submissions on competition in MRS to be capable of altering its conclusions as set out above or, alternatively, establishing in themselves, that the efficiency exclusion applies to the Proposed Survey.

[116] In light of its findings in this Part 3.4, the Commission does not consider it necessary to address the relevant market definition for MRS for pharmaceutical products in Hong Kong.

[117] FCR Guideline, Annex, paragraph 2.15 (emphasis added).

[118] Application, Annex 8, paragraph 34.

3.5 CONCLUSION

3.106 For all of the reasons set out above, the Commission concludes that it has not been demonstrated by the Applicant that the Proposed Survey meets the terms of the efficiency exclusion. The Decision made by the Commission is therefore that the Proposed Survey is not excluded from the application of the first conduct rule by or as a result of the efficiency exclusion.

3.107 As set out under Part 3.2, however, the sharing of some of the data intended to be included in the Proposed Survey would be unlikely to give rise to competition concerns under the first conduct rule in any event, while the sharing of data which permits product-specific data to be directly or indirectly discerned or robustly estimated could give rise to such concerns.

Annex

Sample Sales Survey Report

Sales (HK$) by Company covering Jan-Mar 2017

Sales (HK$) by Company (Jan-Mar 2017)

Sector	Government		Private		Trade		Macau		Total	
Company	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016
A Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
C Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
D Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
E Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
F Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
G Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
H Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
I Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
J Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
K Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
L Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
M Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
N Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
O Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
P Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
Q Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
R Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
S Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
T Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
U Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
V Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
W Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
Z Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
	$0	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Sales (HK$) by Company covering Jan-Mar 2017 (Prescription)

EXAMPLE

Sales (HK$) by Company (Jan-Mar 2017) (Prescription)

Sector	*Government*		*Private*		*Trade*		*Macau*		*Total*	
Company	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*
A Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
C Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
D Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
E Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
F Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
G Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
H Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
I Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
J Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
K Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
L Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
M Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
N Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
O Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
P Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
Q Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
R Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
S Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
T Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
U Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
V Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
W Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
Z Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
	$0	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Sales (HK$) by Company covering (Jan-Mar 2017) (Prescription)

EXAMPLE

Sales (HK$) by Company Jan-Mar 2017 (Prescription)

Sector	*Government*		*Private*		*Trade*		*Macau*		*Total*	
Company	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*
A Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
C Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
D Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
E Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
F Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
G Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
H Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
I Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
J Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
K Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
L Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
M Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
N Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
O Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
P Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
Q Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
R Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
S Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
T Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
U Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
V Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
W Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
Z Company	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
	$0	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Sales (HK$) by Therapeutic Area covering Jan-Mar 2017

EXAMPLE

Sales (HK$) by Therapeutic Area Jan-Mar 2017

Sector		Government		Private		Trade		Macau		Total	
Therapeutic Area	Therapeutic Code	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016
ALL OTHER CYTOSTATICS	L1X	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
PURE VACCINES	J7A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-RHEUMATICS, NON-STEROIDAL	M1	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-EPILEPTICS	N3A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIMETABOLITES	L1B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
HIV ANTIVIRALS	J5C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIULCERANTS	A2B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIPSYCHOTICS	N5A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
IMMUNOSUPPRESSIVE AGENTS	L4A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
EMOLLIENTS, PROTECTIVES	D2A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
DPP-IV INHIBITOR ANTIDIABETICS	A10N	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
NON-NARCOTICS AND ANTI-PYRETICS	N2B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-DEPRESSANTS	N6A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
BONE CALCIUM REGULATORS	M5B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANGIOTENSIN-II ANTAGONISTS, PLAIN	C9C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
PLATELET AGGREGATION INHIBITORS	B1C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CALCIUM ANTAGONISTS, PLAIN	C8A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ERYTHROPOIETIN PRODUCTS	B3C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTICOAGULANTS NON-INJECTABLE	B1A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
COMBINATIONS OF VACCINES	J7B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
HORMONAL CONTRACEPTIVES, SYSTEMIC	G3A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CEPHALOSPORINS	J1D	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
OTHER DERMATOLOGICAL PREPARATIONS	D11A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
OCULAR ANTINEOVASC. PRODS	S1P	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
		$0	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Sales (HK$) by Therapeutic Area covering Jan-Mar 2017 (Prescription)

EXAMPLE

Sales (HK$) by Therapeutic Area (Jan-Mar 2017) (Prescription)

Sector		Government		Private		Trade		Macau		Total	
Therapeutic Area	Therapeutic Code	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016
ALL OTHER CYTOSTATICS	L1X	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
PURE VACCINES	J7A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-RHEUMATICS, NON-STEROIDAL	M1	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-EPILEPTICS	N3A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIMETABOLITES	L1B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
HIV ANTIVIRALS	J5C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIULCERANTS	A2B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIPSYCHOTICS	N5A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
IMMUNOSUPPRESSIVE AGENTS	L4A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
EMOLLIENTS, PROTECTIVES	D2A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
DPP-IV INHIBITOR ANTIDIABETICS	A10N	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
NON-NARCOTICS AND ANTI-PYRETICS	N2B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-DEPRESSANTS	N6A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
BONE CALCIUM REGULATORS	M5B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANGIOTENSIN-II ANTAGONISTS, PLAIN	C9C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
PLATELET AGGREGATION INHIBITORS	B1C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CALCIUM ANTAGONISTS, PLAIN	C8A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ERYTHROPOIETIN PRODUCTS	B3C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTICOAGULANTS NON-INJECTABLE	B1A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
COMBINATIONS OF VACCINES	J7B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
HORMONAL CONTRACEPTIVES, SYSTEMIC	G3A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CEPHALOSPORINS	J1D	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
OTHER DERMATOLOGICAL PREPARATIONS	D11A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
OCULAR ANTINEOVASC. PRODS	S1P	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
		$0	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Sales (HK$) by Therapeutic Area covering Jan-Mar 2017 (Over the Counter)

Sales (HK$) by Therapeutic Area (Jan-Mar 2017) (Over the Counter)

Sector		*Government*		*Private*		*Trade*		*Macau*		*Total*	
Therapeutic Area	*Therapeutic Code*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*
ALL OTHER CYTOSTATICS	L1X	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
PURE VACCINES	J7A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-RHEUMATICS, NON-STEROIDAL	M1	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-EPILEPTICS	N3A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIMETABOLITES	L1B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
HIV ANTIVIRALS	J5C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIULCERANTS	A2B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTIPSYCHOTICS	N5A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
IMMUNOSUPPRESSIVE AGENTS	L4A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
EMOLLIENTS, PROTECTIVES	D2A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
DPP-IV INHIBITOR ANTIDIABETICS	A10N	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
NON-NARCOTICS AND ANTI-PYRETICS	N2B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTI-DEPRESSANTS	N6A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
BONE CALCIUM REGULATORS	M5B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANGIOTENSIN-II ANTAGONISTS, PLAIN	C9C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
PLATELET AGGREGATION INHIBITORS	B1C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CALCIUM ANTAGONISTS, PLAIN	C8A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ERYTHROPOIETIN PRODUCTS	B3C	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
ANTICOAGULANTS NON-INJECTABLE	B1A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
COMBINATIONS OF VACCINES	J7B	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
HORMONAL CONTRACEPTIVES, SYSTEMIC	G3A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CEPHALOSPORINS	J1D	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
OTHER DERMATOLOGICAL PREPARATIONS	D11A	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
OCULAR ANTINEOVASC. PRODS	S1P	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
		$0	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Sales (HK$) by Company - Government Sector, Jan-Mar 2017

EXAMPLE

Sales (HK$) by Company - Government Sector, Jan-Mar 2017

Company	*Sales (HK$) in Jan-Mar 2017*	*Sales (HK$) in Jan-Mar 2016*	*%Q1 2017/Q1 2016*
A Company	$0	$0	.00%
B Company	$0	$0	.00%
C Company	$0	$0	.00%
D Company	$0	$0	.00%
E Company	$0	$0	.00%
F Company	$0	$0	.00%
G Company	$0	$0	.00%
H Company	$0	$0	.00%
I Company	$0	$0	.00%
J Company	$0	$0	.00%
K Company	$0	$0	.00%
L Company	$0	$0	.00%
M Company	$0	$0	.00%
N Company	$0	$0	.00%
O Company	$0	$0	.00%
P Company	$0	$0	.00%
Q Company	$0	$0	.00%
R Company	$0	$0	.00%
S Company	$0	$0	.00%
T Company	$0	$0	.00%
U Company	$0	$0	.00%
V Company	$0	$0	.00%
W Company	$0	$0	.00%
Z Company	$0	$0	.00%
	$0	**$0**	**.00%**

Product Sales (HK$) by Company in Jan-Mar 2017

EXAMPLE

Product Sales (HK$) by Company (Jan-Mar 2017)

				Sector	Government		Private		Trade		Macau		Total	
Company	*Product*	*Therapeutic Area*	*Therapeutic Code*	*Prescription/Over the Counter*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*	*Sales*	*%Q1 2017/Q1 2016*
Company A														
A	Product A	ALKYLATING AGENTS	L1A	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product B	INTERFERONS	L3B	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product C	CORTICOIDS	R3D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product D	FIBRINOLYTICS	B1D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product E	FLUOROQUINOLONES	J1G	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product F	TRANQUILLISERS	N5C	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product G	STOMATOLOGICALS	A1A	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product H	ANTI-ARRHYTHMICS	C1B	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
A	Product I	CYTOSTATIC ANTIBIOTICS	L1D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
				Prescription Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Over The Counter Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Product Sales (HK$) by Company in Jan-Mar 2017

EXAMPLE

Product Sales (HK$) by Company (Jan-Mar 2017)

				Sector	Government		Private		Trade		Macau		Total	
Company	Product	Therapeutic Area	Therapeutic Code	Prescription/Over the Counter	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016
Company B														
B	Product A	ALKYLATING AGENTS	L1A	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product B	INTERFERONS	L3B	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product C	CORTICOIDS	R3D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product D	FIBRINOLYTICS	B1D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product E	FLUOROQUINOLONES	J1G	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product F	TRANQUILLISERS	N5C	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product G	STOMATOLOGICALS	A1A	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product H	ANTI-ARRHYTHMICS	C1B	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
B	Product I	CYTOSTATIC ANTIBIOTICS	L1D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
				Prescription Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Over The Counter Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Product Sales (HK$) by Therapeutic Area in Jan-Mar 2017

EXAMPLE

Product Sales (HK$) by Therapeutic Area (Jan-Mar 2017)

				Sector	Government		Private		Trade		Macau		Total	
Therapeutic Area	Therapeutic Code	Product	Company	Prescription/Over the Counter	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016
X														
ALKYLATING AGENTS	L1A	Product A	A	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
INTERFERONS	L3B	Product B	B	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CORTICOIDS	R3D	Product C	C	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
FIBRINOLYTICS	B1D	Product D	D	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
FLUOROQUINOLONES	J1G	Product E	E	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
				Prescription Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Over The Counter	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Product Sales (HK$) by Therapeutic Area in Jan-Mar 2017

EXAMPLE

Product Sales (HK$) by Therapeutic Area (Jan-Mar 2017)

				Sector	Government		Private		Trade		Macau		Total	
Therapeutic Area	Therapeutic Code	Product	Company	Prescription/Over the Counter	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016	Sales	%Q1 2017/Q1 2016
ALKYLATING AGENTS	L1A	Product F	F	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
INTERFERONS	L3B	Product G	G	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CORTICOIDS	R3D	Product H	H	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
FIBRINOLYTICS	B1D	Product I	I	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
FLUOROQUINOLONES	J1G	Product J	J	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
				Prescription Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Over The Counter	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**

Product Sales (HK$) by Therapeutic Area in Jan-Mar 2017

EXAMPLE

Product Sales (HK$) by Therapeutic Area (Jan-Mar 2017)

				Sector	Government		Private		Trade		Macau		Total	
Therapeutic Area	Therapeutic Code	Product	Company	Prescription/Over the Counter	Sales	% Q1 2017/Q1 2016	Sales	% Q1 2017/Q1 2016	Sales	% Q1 2017/Q1 2016	Sales	% Q1 2017/Q1 2016	Sales	% Q1 2017/Q1 2016
Z														
ALKYLATING AGENTS	L1A	Product K	K	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
INTERFERONS	L3B	Product L	L	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
CORTICOIDS	R3D	Product M	M	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
FIBRINOLYTICS	B1D	Product N	N	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
FLUOROQUINOLONES	J1G	Product O	O	Prescription	$0	.00%	$0	.00%	$0	.00%	$0	.00%	$0	.00%
				Prescription Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Over The Counter Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**
				Total	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**	**$0**	**.00%**