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**Section 57 of the Competition Act 2004**

**Grounds of Decision issued by the Competition and Consumer Commission of Singapore in relation to the Proposed Acquisition by iNova of Mundipharma's Consumer Healthcare Business**

**Date: 5 December 2023**

**Case number: 400/140/2023/003**

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Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [§<].

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## **I. INTRODUCTION**

1. On 26 September 2023, the Competition and Consumer Commission of Singapore (“CCCS”) accepted an application from iNova Pharmaceuticals (Singapore) Pte.Limited (“iNova”) for a decision as to whether its proposed acquisition of assets relating to Mundipharma’s consumer healthcare business in a number of countries, including Singapore (the “Target Business”) (the “Proposed Transaction”) would infringe section 54 of the Competition Act 2004 (the “Act”).<sup>1</sup> For the purposes of the present assessment, iNova and the Target Business are collectively referred to as the “Parties”.
2. In reviewing the Proposed Transaction, CCCS conducted a public consultation and sought feedback from 44 stakeholders, including the Parties’ competitors and customers (collectively referred to as “third parties”) and [X]. The majority of the third parties stated that they have no competition concerns in relation to the Proposed Transaction.
3. At the end of the consultation process and after evaluating the available information, CCCS concludes that the Proposed Transaction, if carried into effect, will not infringe section 54 of the Act.

## **II. THE PARTIES**

### **(a) The Acquirer**

#### iNova

4. iNova is a pharmaceutical company which develops, markets, and sells a range of healthcare products, including prescription products and consumer healthcare products, in over 20 countries.<sup>2</sup> iNova is part of the iNova Pharmaceuticals group of companies.<sup>3</sup>
5. In Singapore, iNova offers prescription medicines and consumer healthcare products, including throat preparation products and products relating to cough, body care, weight management, pain management, respiratory health, cardiology, and dermatology under the following brands: Difflam, Duro-Tuss, Dermaveen,

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<sup>1</sup> CCCS accepted the application as complete on 26 September 2023 after iNova had provided further information and had submitted an amended Form M1 incorporating the necessary information (“Amended Form M1”).

<sup>2</sup> Paragraph 10.13 of the Amended Form M1.

<sup>3</sup> Paragraph 7.1 of the Amended Form M1.

Duromine, Contrave, Norgesic, Metsal, Nuellin, Tambocor, and Aldara. iNova's supply of these brands in Singapore is through its distributor, [REDACTED].<sup>4</sup>

**(b) The Target**

**The Target Business**

6. The Target Business refers to the consumer healthcare business currently carried out by Mundipharma in several countries,<sup>5</sup> including Singapore.<sup>6</sup>
7. In Singapore, the Target Business offers throat preparation products, cold and flu products, feminine wash products and wound care products under its Betadine brand, through [REDACTED] distributor [REDACTED].<sup>7</sup>

**III. THE PROPOSED TRANSACTION**

8. The Proposed Transaction concerns the acquisition by iNova of the assets relating to the Target Business<sup>8</sup> under a sale and purchase agreement entered into by iNova and the sellers<sup>9</sup> on 22 June 2023 (the "International SPA"). Following the completion of the International SPA, iNova will have sole control of the Target Business.<sup>10</sup>
9. The Proposed Transaction is part of a wider acquisition by iNova. iNova has entered into a separate sale and purchase agreement for the assets and rights associated with Mundipharma's consumer healthcare business in Australia and New Zealand, and for a licensing agreement covering jurisdictions not including Singapore.<sup>11</sup>
10. The Proposed Transaction constitutes a merger under section 54(2)(c) of the Act as it involves the proposed acquisition by iNova of the Target Business, following which iNova will have sole control of the Target Business.

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<sup>4</sup> Paragraph 10.16 of the Amended Form M1.

<sup>5</sup> The countries are [REDACTED].

<sup>6</sup> Paragraph 1.2 of the Amended Form M1.

<sup>7</sup> Paragraph 10.17 of the Amended Form M1.

<sup>8</sup> Paragraph 3.1 of iNova's 5 September 2023 response to CCCS's 15 August 2023 Request For Information ("RFI").

<sup>9</sup> The sellers are certain Mundipharma entities set out in the International SPA.

<sup>10</sup> Paragraph 11.1 of the Amended Form M1.

<sup>11</sup> Paragraph 1.1 of the Amended Form M1.

#### **IV. COMPETITION ISSUES**

11. iNova submitted that the Parties overlap in the supply of throat preparation products in Singapore.<sup>12</sup> Throat preparation products are formulated to address sore throats, which, amongst others, often arise from throat, nose/throat or mouth/throat infections. These come in a variety of different forms such as lozenges, sprays, and gargles.<sup>13</sup>
12. While iNova and the Target Business also supply other healthcare products, such as consumer healthcare products in Singapore, there is no overlap between the Parties in respect of these other specific products supplied by each party.<sup>14</sup>
13. Given the above, CCCS's assessment focused on whether the Proposed Transaction will lead to horizontal effects in relation to the supply of throat preparation products in Singapore.

#### **V. COUNTERFACTUAL**

14. CCCS considers the prevailing conditions of competition prior to the Proposed Transaction to be the appropriate counterfactual for this assessment. The available evidence does not indicate that the market structure or competition dynamics in the counterfactual would differ from the status quo.

#### **VI. RELEVANT MARKETS**

15. iNova submitted that the relevant product market should comprise all cough, cold and flu products, and throat preparation products (collectively referred to as "CCFT products"), which are products that can be used to relieve and/or treat cold and flu type symptoms, including cough, cold and flu products and dedicated analgesics.<sup>15</sup>
16. Contrary to the submissions of iNova, third party feedback indicated that multi-symptom cough, cold and flu products are not close substitutes to the throat preparation products supplied by iNova and the Target Business, as these products serve a different function from throat preparation products which are used to treat sore throat. Additionally, CCCS received feedback from competing suppliers of throat preparation products that they do not consider the other CCFT products

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<sup>12</sup> Paragraph 15.1 of the Amended Form M1.

<sup>13</sup> Paragraph 19.1 of the Amended Form M1.

<sup>14</sup> Paragraphs 10.16 and 10.17 of the Amended Form M1.

<sup>15</sup> Paragraph 15.1 of the Amended Form M1.

such as cough, cold and flu products which they sell, to compete directly with the throat preparation products sold by iNova and the Target Business as the product indications are different.

17. Based on iNova's submissions and feedback from third parties, CCCS is of the view that the relevant market which would serve as a useful frame of reference for the assessment of the Proposed Transaction is the market for the supply of throat preparation products (which is also the overlapping product) to customers in Singapore (the "Relevant Market").

## **VII. CCCS'S ASSESSMENT**

### **(a) Market Shares and Market Concentration**

18. CCCS notes that the assessment of the relative position of the key competitors, as well as the market share estimates of the merged entity differ significantly depending on whether it is based on sales volume or sales value. For the year 2022, CCCS notes that the Parties' combined market share based on (i) sales value was between 40% to 50% and (ii) sales volume was between 10% to 20%.<sup>16</sup>
19. Third party feedback also suggested that the market share of suppliers for throat preparation products in Singapore can differ based on the database used. Furthermore, information from third parties ranking the top 5 suppliers of throat preparation products were not entirely consistent with the estimated market share figures provided by iNova. In fact, customers listed other suppliers of throat preparation products in their top 5 largest suppliers of throat preparation products in Singapore who were not identified by iNova and the Target Business as key competitors.
20. In view of the above, the market share figures provided by iNova may not be reliable in reflecting the relative competitive positions of iNova, the Target Business and their key competitors in the Relevant Market. In this regard, while the Parties' combined market share (by value) exceed CCCS's indicative threshold of 40%, CCCS is of the view that this may not be necessarily indicative that potential competition concerns in fact exist.

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<sup>16</sup> Annex 3 of iNova's 4 October 2023 response to CCCS's 29 September 2023 RFI; and paragraph 5.3.3 of iNova's 17 October 2023 response to CCCS's 11 October 2023 RFI.

**(b) Barriers to Entry and Expansion**

21. iNova submitted that the throat preparation space is relatively mature, and intellectual property rights and regulatory requirements do not pose a significant barrier to entry or expansion in Singapore.<sup>17</sup> In terms of timing and cost, iNova submitted that suppliers could quickly enter the Singapore market in less than 12 months and this could cost as low as [S\$].<sup>18</sup>
22. Third party feedback received by CCCS suggested that barriers to entry and expansion may not be as low as submitted by iNova. While third party feedback corroborated iNova's submission that the regulatory requirements in Singapore are low, significant time and costs were cited by a third party as being required to set-up manufacturing operations for throat preparation products for both greenfield manufacturing (i.e., a brand new supplier in the throat preparation space or an existing supplier of CCFT products who does not currently supply throat preparation products) and brownfield manufacturing (i.e., existing suppliers who currently supply one dosage format of throat preparation products (e.g., lozenges) to switch its production line to supply a different dosage format (e.g., spray) or vice versa). CCCS further received feedback that economies of scale are necessary to practically sustain an efficient manufacturing operation of throat preparation products as the demand from Singapore by itself is insufficient and would require combining demands from neighbouring countries to sustain an efficient manufacturing operation.
23. Notwithstanding the above, CCCS notes that third party feedback corroborated iNova's submission that it is possible for suppliers to start supplying throat preparations in Singapore through readily available contract manufacturers (which generally specialise and have the equipment to manufacture a particular dosage format, as well as off-the-shelf formulation).
24. On balance, CCCS considers that the barriers to entry and expansion are moderate, in view of the mixed feedback received on the extent to which new entrants are able to enter and expand into the Relevant Market through various means.

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<sup>17</sup> Paragraphs 19.23 and 34.6 of the Amended Form M1.

<sup>18</sup> Paragraph 6.2.2 of iNova's 13 October 2023 response to CCCS's 9 October 2023 RFI; and paragraph 5.1.2 of iNova's 10 November 2023 response to CCCS's 8 November 2023 RFI.

**(c) Countervailing Buyer Power**

25. Based on iNova's submissions and third parties' feedback, CCCS is of the view that except for selected retailers, i.e., chain pharmacies and supermarkets, which may have higher countervailing buyer power ("CBP"), the rest of the customers generally have either low or negligible CBP and do not have the ability to exert sufficient CBP to constrain the merged entity.

**(d) Non-Coordinated Effects**

26. Based on iNova's submissions and third parties' feedback, CCCS has assessed that the Proposed Transaction is unlikely to give rise to non-coordinated effects for the following reasons:

- (a) There are multiple suppliers of throat preparation products that compete closely with the Parties. Third parties' feedback corroborated iNova's submission in identifying several other suppliers of throat preparation products who compete closely with the Parties in the Relevant Market;
- (b) Third parties provided feedback that customers could easily switch to purchasing throat preparation products from another supplier due to the high demand-side substitutability between the throat preparation products supplied by different suppliers; and
- (c) There is some indication from third parties suggesting that selected intermediate customers i.e., chain pharmacies and supermarkets, may have some degree of CBP to constrain the merged entity in order to obtain better prices.<sup>19</sup>

**(e) Coordinated Effects**

27. Based on the iNova's submissions and third parties' feedback, CCCS has assessed that the Proposed Transaction, if carried into effect, is unlikely to result in coordinated effects for the following reasons:

- (a) The therapeutic indication and retail prices of throat preparation products are transparent and easily comparable for consumers to choose, given that they are displayed on the shelves of retailers, and there is no additional information

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<sup>19</sup> Paragraph 2.13 of iNova's 1 November 2023 response to CCCS's 27 October 2023 RFI.



available to competing suppliers from the Proposed Transaction to assist in coordination; and

- (b) Selected intermediate customers, i.e., chain pharmacies and supermarkets, may have an ability to negotiate with suppliers to obtain better supply prices and promotional programs from their suppliers. Coordination would also be more difficult for intermediate customers e.g., retailers and physicians as the procurement and negotiation process for each of them may differ, with varying contract lengths. This reduces the ability of competitors in the Relevant Market to align and gain the stability required for coordination to occur or be sustainable.<sup>20</sup>

**(f) Vertical Effects**

- 28. CCCS has assessed that vertical effects are unlikely to arise as there is no existing vertical relationship, including existing supply arrangements between the Parties.<sup>21</sup>

**(g) Conglomerate Effects**

- 29. Based on the information received, CCCS has assessed that the Proposed Transaction, if carried into effect, is unlikely to result in conglomerate effects as the merged entity will not have the ability to foreclose competitors by requiring customers to purchase products in a bundle, given that selected intermediate customers may have some degree of CBP and customers' general preference is to stock a range of products across various brands and suppliers.

*Conclusion on Competition Assessment*

- 30. Based on the above considerations, CCCS concludes that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore.

**VIII. EFFICIENCIES**

- 31. Given that the competition assessment did not raise SLC concerns, it is not necessary for CCCS to assess the efficiencies claimed by iNova.

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<sup>20</sup> Paragraph 34.7 of the Amended Form M1, paragraph 1.4, 1.4.3 and 1.5 of iNova's 10 November 2023 response to CCCS's 8 November 2023 RFI; and paragraph 2.3, 2.8, 2.9, 2.11 and 2.13 of iNova's 1 November 2023 response to CCCS's 27 October 2023 RFI.

<sup>21</sup> Paragraph 36.1 of the Amended Form M1.

## **IX. ANCILLARY RESTRICTIONS**

32. iNova submitted that the International SPA contains non-compete restrictions (the “Non-Compete Restrictions”)<sup>22</sup> and they are directly related to the Proposed Transaction, but ancillary to the subject of the Proposed Transaction.<sup>23</sup> iNova also submitted that the Non-Compete Restrictions are necessary for the implementation of the Proposed Transaction to allow iNova to obtain the full benefit from the business (including the goodwill of the business) and assets to be acquired as part of the Proposed Transaction,<sup>24</sup> and they are not overly restrictive and do not go beyond that which is necessary to ensure that the full value of the Parties’ combined business is protected.<sup>25</sup> Specifically, the scope and the duration of the Non-Compete Restrictions are limited to [X] and [X] after the closing of the Proposed Transaction respectively.<sup>26</sup>
33. CCCS has assessed that the Non-Compete Restrictions set out in the International SPA, which will apply [X] after the closing of the Proposed Transaction and is limited to [X],<sup>27</sup> are directly related and necessary to allow iNova to obtain the full benefit from the business (including the goodwill of the business) and assets to be acquired as part of the Proposed Transaction.<sup>28</sup> CCCS considers that the [X] period is a properly limited duration for the Non-Compete Restriction which is also in line with CCCS’s past decisional practice.
34. CCCS concludes that the Non-Compete Restrictions benefit from the Ancillary Restriction Exclusion under the Act, insofar as it relates to Singapore.

## **X. CONCLUSION**

35. For the reasons above and based on the information available, CCCS assesses that the Proposed Transaction, if carried into effect, will not lead to an SLC in Singapore and consequently, will not infringe the section 54 prohibition.

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<sup>22</sup> Paragraph 44.1 of the Amended Form M1.

<sup>23</sup> Paragraph 44.4 of the Amended Form M1.

<sup>24</sup> Paragraph 44.4 of the Amended Form M1.

<sup>25</sup> Paragraph 44.6 of the Amended Form M1.

<sup>26</sup> Paragraphs 44.6.1 and 44.6.2 of the Amended Form M1.

<sup>27</sup> Paragraph 44.6 of the Amended Form M1.

<sup>28</sup> Paragraph 44.4 of the Amended Form M1.

36. In accordance with section 57(7) of the Act, the decision will be valid for a period of one year from the date of CCCS's decision.

A handwritten signature in black ink, appearing to be 'Sia Aik Kor'.

Sia Aik Kor  
Chief Executive  
Competition and Consumer Commission of Singapore