

July 16, 2015

Dr Kathleen Dermody
Committee Secretary
Senate Economics References Committee
Parliament House,
PO Box 6100
Canberra ACT 2600

Dear Dr Dermody,

Inquiry into Corporate Tax Avoidance

At the Committee hearing on July 1, 2015, Johnson & Johnson Pty Ltd (“JJPL”) undertook to provide answers to three questions taken on notice.

In reference to the question from Senator Milne regarding the promotion of products such as Risperdal, Invega and Natrecor: *“for uses that were not approved as safe or effective and for misbranding of those products”* we submit that:

- There has been no legal or regulatory action against JJPL or its companies in Australia for antipsychotic medicines that were “not approved as safe and effective”.
- There has been no legal or regulatory action against JJPL or its companies in Australia for “misbranding” of our medicines.
- JJPL and its companies have not promoted – nor been accused in any legal or regulatory action in Australia of promoting – off-label use of antipsychotic medicines (including Risperdal and Invega).
- JJPL and its companies do not sell Natrecor (a treatment for congestive heart failure) in Australia.

In reference to the question from Senator Milne requesting *“the past 10 years of annual financial reports”*, and to clarify our answer given at the hearing relating to “exemptions”, we submit that:

- The Australian subsidiaries of JJPL have been granted relief from the necessity to prepare individual entity financial reports in accordance with Class Order 98/1418 issued by the Australian Securities & Investment Commission.
- On this basis, only consolidated JJPL financial reports are lodged with Australian Securities & Investment Commission on an annual basis.

We also attach the JJPL audited financial statements for:

- The Year ended December 2014.
- The Year ended December 2013.
- The Year ended December 2012. This report also includes the financial results for the Year ended December 2011 as comparatives.
- The Year ended December 2010. This report also includes the financial results for the Year ended December 2009 as comparatives.
- The Year ended December 2008. This report also includes the financial results for the Year ended December 2007 as comparatives.
- The Year ended December 2006. This Report also includes the financial results for the Year ended December 2005 as comparatives.

In reference to the questions from Senators Xenophon and Milne on comparative international pricing information on medicines (transfer pricing), we submit that:

- As noted in the evidence at the hearings on 1 July 2015, companies in other countries in the Janssen pharmaceutical business pay prices that comply with the OECD guidelines on transfer pricing and local transfer pricing rules. Prices are set taking into account the functions performed, assets owned and risks assumed by these companies to target reasonable profit margins. Hence, companies that have intellectual property assets or assume key entrepreneurial or business risks would generally have more volatile profits, or losses, and cannot be compared with Janssen Australia. Generally, a so-called *Transactional Net Margin Method*, using operating margin as the profit level indicator, is used to determine an appropriate level of profit for an affiliated distributor. This method is generally accepted as the most appropriate method by OECD and tax authorities worldwide to test the profitability of affiliated companies that act as distributors.
- With respect to Senator Milne's question on profitability formula, profit margins of independent distributors with comparable functions and risks are benchmarked locally or regionally by specialized external economists. These economists use publicly available information to determine a range of profitability that is considered arm's length. Benchmarks in developed countries that are appropriate and comparable to Australia such as Canada, France, Italy, Spain, UK and Germany show that independent distributors typically earn between 2% and 6% on their gross turnover. As Ms Weingrod pointed out in her evidence to the Committee, higher profits, or losses, are attributed to the high value contributors in the value chain such as the intellectual property owners in the pharmaceutical industry who bear the risk of billions of dollars in R&D expenditure, R&D failures, unsuccessful products, product recalls and product liability.
- Janssen Australia does not have valuable intellectual property, does not undertake major risks, does not bear major R&D expenditure, does not bear the costs of recalls and, most importantly, does not make high value contributions in the discovery or development of the Janssen intellectual property. Janssen Australia is essentially a distributor of pharmaceutical products in the Australian market.
- In response to Senator Xenophon's question, below we show pricing information for Janssen Australia's top three selling products. These three products alone account for one-third of Janssen Australia's total sales in 2014. We compare to four Janssen companies in the region

in Japan, China, Taiwan and Thailand. Janssen Japan and China are our largest two Janssen companies in Asia, with sales of 350% and 200% of Janssen Australia, respectively. Janssen Japan and China have higher risk and function profiles than the Australian distributor with respect to some products that they manufacture locally, but not with respect to Australia's top three products listed below, which they import. We also show Janssen Taiwan, which is very close in its profile to Australia, importing all its Janssen products for local distribution. Its market size is about 25% of the size of the Australian market. Finally, we show Janssen Thailand, which is a small market, with sales at not more than 20% of Australia.

- As the Committee will appreciate that pricing is highly confidential information and commercially sensitive, we have not presented this in AUD equivalent but as percentages of the Australian price as the base, using current exchange rates for conversion where prices of other countries are denominated in non-AUD currencies:-

	Australia	China	Japan	Taiwan	Thailand
<i>Remicade</i> ⁽¹⁾ Unit of 1X100MG VIAL	100%	125%	Does not sell this product.	Product not yet launched.	92%
<i>Stelara</i> ⁽²⁾ Unit of 1X45MG VIAL	100%	Product not yet launched.	83%	88%	103%
<i>Zytiga</i> ⁽³⁾ Unit of 250MG 120 TABL.	100%	Product not yet launched.	132%	219%	169%

Footnotes:

- Remicade* is for treatment of auto-immune diseases, e.g. Rheumatoid Arthritis, Crohn's and Psoriatic Arthritis.
- Stelara* treats psoriatic arthritis.
- Zytiga* treats prostate cancer.

Yours sincerely,
Johnson & Johnson Pty Ltd

Simon Farquhar
 Company Secretary