# ANNEX to form AD

## *In general, the information required by the Annex to Form AD need only be provided in respect of Applications which require a Competition Commission (“Commission”) decision that an agreement is excluded from the application of the First Conduct Rule by or as a result of section 1 (Agreements enhancing overall economic efficiency) of Schedule 1 to the Competition Ordinance (Cap 619) (“Ordinance”).[[1]](#footnote-1)*

## *In certain cases, the Commission may however request some or all of the information required under this Annex (or comparable information) in respect of Applications concerning other exclusions or exemptions if the information is necessary for the purposes of the Commission making the relevant decision under section 9 and/or section 24 of the Ordinance. This is a matter which may be discussed with the Commission during an Initial Consultation.*

## Relevant Market(s)[[2]](#footnote-2)

1. Define and describe the relevant product and geographic markets[[3]](#footnote-3) that in the Applicant’s opinion should form the basis of the analysis of the Application and any other product and geographic market definitions that are plausible alternatives.[[4]](#footnote-4) This should include but is not limited to:
   1. a list of the relevant product(s)[[5]](#footnote-5) offered by each of the parties mentioned in Part 2 of Form AD (including any relevant product(s) offered by each member of the corporate groups to which the parties belong);
   2. the reasons why the identified product and geographic markets should form the basis of the analysis of this Application.[[6]](#footnote-6)

## Competitive Conditions in the Relevant Market(s)

1. With respect to each of the relevant market(s) (including plausible alternative markets) identified in paragraph A.1 above, describe the competitive position of the parties to the agreement in question and of their main competitors. This should include but is not limited to:
   1. the proportion of the turnover figures of the relevant parties (as provided in Part 2 of the Form AD) that is attributable to the identified product market(s);
   2. the Applicant’s best estimates of the market shares (in terms of value and volume) of each of the relevant parties and their main competitors in the relevant market(s), and the level of concentration in those market(s), in each of the three years prior to the Application;[[7]](#footnote-7)
   3. the contact details of the main competitors identified in paragraph A.2.2 above, including in each case the competitor’s name, address, telephone and fax numbers, email address, where possible the contact details of an appropriate contact person and the competitors’ website address (if any);
   4. the identity and contact details of the five main customers[[8]](#footnote-8) of each relevant party in respect of the relevant products in the year prior to the Application, including in each case the customer’s name, address, telephone and fax numbers and an email address for the named contact and the customer’s website address (if any);
   5. the identity and contact details of the five main suppliers[[9]](#footnote-9) (of raw materials or other inputs used in the production of the relevant products) of each relevant party in the year prior to the Application, including in each case the supplier’s name, address, telephone and fax numbers, an email address for the relevant named contact, and the supplier’s website address (if any).
2. Provide a brief explanation of the structure of demand in each of the relevant market(s) (including plausible alternative markets) identified in paragraph A.1 above. This should include, for example, a description of:
   1. the way in which customers purchase the products in question;
   2. the importance of customer preferences (in terms of price, brand loyalty, product differentiation, pre- and after-sales services, and the provision of a full range of products);
   3. the different categories of customers in the market;
   4. the extent to which customers are willing and able to switch between suppliers.
3. Provide a brief explanation of the structure of supply in each of the relevant market(s) (including plausible alternative markets) identified in paragraph A.1 above. This should include, for example, a description of:
   1. the manner in which the products in question are produced, priced and sold;
   2. the nature and extent of vertical integration in the market;
   3. the distribution systems prevailing in the market;
   4. the service networks (for example repair and maintenance) prevailing in the market (if any).
4. Describe the potential competition with respect to each of the relevant market(s) (including plausible alternative markets) identified in paragraph A.1 above by:
   1. setting out the Applicant’s view on its potential competitors in the market;
   2. specifying any significant barriers to entry to or expansion in the market; and
   3. providing details of instances of market entry, market exit and market consolidation (i.e. merger or acquisition) in the five years prior to the Application.
5. Provide copies of any reports, studies, surveys or comparable documents prepared by third parties[[10]](#footnote-10) in the past five years which refer to the competitive conditions in any of the relevant market(s) (including plausible alternative markets) identified in paragraph A.1 above.

1. Where an Application is made in respect of an agreement or conduct falling within the concurrent jurisdiction of the Commission and the Communications Authority under section 159 of the Ordinance, references to the Commission in this Annex to Form AD include the Communications Authority as the context requires. [↑](#footnote-ref-1)
2. The term “relevant market” has a technical meaning in competition analysis and the manner in which the Commission defines the market may differ from how businesses typically think of a market. For information on the Commission’s general approach to market definition, Applicants should consult Part 2 of the Commission’s *Guideline on the Second Conduct Rule*. [↑](#footnote-ref-2)
3. The relevant market(s) for the purposes of the Application are established by a combination of the relevant product and geographic markets. For example, where the relevant product market is the market for product X and the relevant geographic market is area Y, market share, competitor information and other market-related information should be provided in respect of the market for product X in area Y. Applicants are referred generally to Part 2 of the Commission’s *Guideline on the Second Conduct Rule.* [↑](#footnote-ref-3)
4. For example, where a worldwide geographic market is proposed as the relevant geographic market, the Applicant may consider alternatives such as a regional geographic market, a geographic market comprising Hong Kong or a part of Hong Kong. Plausible alternative market definitions may be identified on the basis of previous Decisions of the Commission or case-law of the Competition Tribunal and other courts, by reference to industry reports or third party market studies, as well as internal documents of the Applicant. [↑](#footnote-ref-4)
5. Unless the context indicates otherwise, a reference to a product or products in this Annex includes a service or services. [↑](#footnote-ref-5)
6. The markets that should form the basis for analysis of an agreement generally include all markets in Hong Kong, including Hong Kong or a part of Hong Kong, where (a) two or more parties to the agreement are engaged in business activities in the same product market; (b) one or more parties to the agreement are engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party is active; and (c) any other markets which might be affected by the agreement in question. [↑](#footnote-ref-6)
7. Applicants should indicate the basis and sources for the calculations and provide supporting documents (e.g. third party studies or market reports) where available to confirm these calculations. [↑](#footnote-ref-7)
8. Provide information on the top five customers by sales and, if different, the top five customers by volume. [↑](#footnote-ref-8)
9. Provide information on the top five suppliers by sales and, if different, the top five suppliers by volume. [↑](#footnote-ref-9)
10. For example, trade associations, market analysts and market researchers etc. [↑](#footnote-ref-10)