

1 October 2018

New Zealand Competition Commission

**Submission in response to the draft determination on
Infant Nutrition Council application for authorisation of its Marketing Agreement on
Infant Formula (MAIF Agreement)**

Dear Sir or Madam,

Thank you for the opportunity to comment on the NZCC draft determination on reauthorisation of the proposed industry Agreement.

Regulation of marketing of baby food products for infants and young children is desirable and appropriate because of the health importance to women and children of breastfeeding. Mothers of young children are uniquely vulnerable to the harmful effects of marketing of such products, in particular where it undermines breastfeeding.

In 2016, World Health Assembly member states passed a resolution welcoming new WHO guidance on ending the inappropriate promotion of foods for infants and young children. This responded to growing concern and evidence worldwide that inappropriate promotion of breast milk substitutes, and some commercial complementary foods and beverages for infants and young children, has been undermining progress in infant and young child feeding (i.e. both breastfeeding and nutritionally adequate and safe complementary foods after the age of six months). The WHO recommendations aim to provide guidance to WHO member states, the private sector, health systems, civil society and international organisations on how to meet their obligations under the Code. WHO recommendations to member states included:

- introducing all provisions of the WHO Code into domestic law, to implement and enforce these standards (Recommendation 4.1)
- extension of implementation to all products within the full scope of the WHO Code, clarifying that this includes milk drinks marketed as suitable for children aged up to two years (Recommendation 4.1)
- products manufactured by companies that market breast milk substitutes should not be promoted using similar colour schemes and designs, similar names and similar promotional slogans, mascots or other symbols (Recommendation 4.2.3).

My submission strongly supports the public benefit of extending coverage of the MAIF Agreement in Australia to cover all formula for infants to 12 months of age as proposed by INC. This will contribute to the protection of breastfeeding from marketing. Further public

benefit would arise from extending the Agreement to 36 months in line with the WHO International Code and subsequent relevant Resolutions of the World Health Assembly.

There is ample evidence that voluntary measures do not work to effectively restrain inappropriate commercial marketing of foods for infants and young children. Such evidence was presented in a WHO Secretariat report on the harmful effects of marketing on children for the WHO Western Pacific Regional (WPR) Meeting in Brisbane in October 2017.¹

Nevertheless, I submit further that consistent with the 2016 Resolution of the World Health Assembly, the industry should also voluntarily extend the agreement to so called toddler milks/formulas. This would demonstrate a more genuine commitment to the optimal nutrition and wellbeing of infants and young children, and would represent a responsible industry response to the evidence at the WHO WPR Meeting.

However, I would like to lodge a strong objection to the proposed reauthorization of the industry's new MAIF Agreement for no more than 2 years. Australian and New Zealand have a free trade agreement. They are also regulated by Food Standards Australia under direction of a joint Ministerial Council. The Infant Nutrition Council represents industry in both countries.

It is desirable and in the public interest therefore that there be a coordinated, and consistent policy response in the two countries. Limiting the proposed agreement to a period of 3 years (to 2021) will prevent industry using forum shopping and other delaying tactics to prevent the recommendation of important public health recommendations such as the WHA 2016 and 2018 resolutions and WHO WPRO Regional Resolution (WPR/RC68.R3) by Australian and New Zealand governments, and will allow better coordination of policy implementation in the two closely linked countries so as to protect vulnerable consumers.

Such an approach to the proposal also ensures that free trade between the countries does not come in to public disrepute due to industry taking advantage of lack of coordinated public health policy regulation. It should be noted that consideration of any theoretical or perceived loss of consumer benefit from restraining inappropriate marketing of infant and young child foods is problematic in light of Article 24 of the Convention on the Rights of the Child (and other human rights instruments) under which New Zealand has accepted obligations to pursue full realisation of human rights regarding breastfeeding.² In 2016, the

¹ World Health Organization Western Pacific Region (WHOWPR) (2017), 'Protecting children from the harmful impact of food marketing'. <http://iris.wpro.who.int/handle/10665.1/13659>

² "Article 24:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary

United Nations Office of the Human Rights Commissioner in 2016 noted that implementation of the WHO International Code and subsequent Resolutions forms part of the core obligations of governments under such treaties.³

I would like to draw to your attention that when the ACCC reauthorised the Australian MAIF in 2016 (attached), it did not agree to INCs request for a 10 year agreement, and only approved the agreement until 2021. The ACCC in its 2016 determination accepted a multitude of public submissions that a shorter authorisation period will better protect and promote the public interest.

Due to the short time available for preparation of this submission, I refer you to my submission to the ACCC in 2015 and 2016 (attached), along with the ACCC determination on INCs proposal, for further argument.

Thank you for the opportunity to respond to the draft determination.

Yours Sincerely

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health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services."

³ United Nations Human Rights. Office of the High Commissioner (OHCHR) (2016), 'Joint statement by the UN Special Rapporteurs on Discrimination against Women in law and in practice, and the Committee on the Rights of the Child'.

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871>, 22 November.