
From:
Sent: Friday, 12 October 2018 12:36 a.m.
To: Registrar
Cc: infoline@hrc.co.nz
Subject: Infant formula

Hello,

This email concerns the Human Rights outlined in Article 24 of the Convention on the Rights of the Child (CRC, which NZ has ratified), and what I see as disregard for those Rights with in the language and calculations made in the Commerce Commission's August 2018 draft decision on granting the Infant Nutrition Council (baby formula industry) authorisation to follow a revised marketing Code of Practice. (1)

I ask that the Commerce Commission please accept the following as a supplement or addition to my existing submission on their draft decision, and that the Human Rights Commission please look to provide feedback and/or input on the concerns I outline below.

Regards,

Julie Fogarty.

The details of that CRC Article (2) are:

"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 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."

The Commerce Commission, in apparent contrast to the CRC Article 24 (and despite acknowledging breastfeeding as protective against morbidity and mortality at population level), at parts 102 to 104 of its draft decision, presents formula industry promotions as being "information" for citizens. It seems quite problematic (considering they are a government department), that the Commission calculates this promotional information as becoming a LOST consumer benefit when marketing restrictions aimed at giving effect to the 1981 International Code of Marketing of Breast-milk Substitutes are applied.

At part 61 of their draft decision, the Commerce Commission says it is a likely HARM when "restricting the ability of suppliers to inform potential purchasers of the benefits of follow-on formula more generally. So, the Amended INC Code would likely hinder to some extent the ability of formula manufacturers to effectively 'compete' with breastfeeding."

This position the Commerce Commission is taking seems completely at odds with thirty-seven (or probably more) years of United-Nations discourse on the matter; from where it was globally agreed in the 1981 International Code that "the marketing of breast-milk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products", (3) to where the 2017 Implementation Manual prepared for UN Members States, on Ending Inappropriate Promotion of Foods for Infants and Young Children, says "Promotion of foods for infants and young children is considered inappropriate if it interferes with breastfeeding" (page 2) and "The information from baby food companies serves the interests of selling products, and thus cannot be independent and unbiased. Moreover, the primary responsibility for providing such information to mother and other caregivers lies with the government, NGOs and healthcare providers" (page 21). (4)

I find the problematic nature of positioning formula industry marketing material on follow-on formula as "information" of consumer "benefit", is heightened by -

- * the fact that NZ is (and by the details of Commission's relevant decision-making and press-releases, looks set to remain) operating far short of the global ethical standards (see (3) and (4)) for marketing formula products in a way that doesn't violate the CRC.

- * the fact follow-on formula (marketed specifically for age 6-12 months) is an option deemed nutritionally unnecessary by the UN's health authorities at the World Health Organisation. Infant formula for use from birth, if needed, is appropriate for use throughout infancy, including alongside solid foods from 6 months. (5) And any marketing aimed at convincing parents to move an infant formula fed infant onto follow-on formula, is pushing for an unnecessary dietary change that may affect their health. The Ministry of Health advises not changing formula if you have one which agrees with your baby, (6) and events in the UK over recent months, where large numbers of infants became ill from a formula recipe alteration, highlight the sensitivity to unnecessary formula changes that formula-fed babies can experience. (7)

- * the fact that I have presented to the Commission, over the past year, numerous examples of highly nuanced, misleading and breastfeeding-undermining messages this industry is free to communicate to New Zealand mothers. My first submission on this Commerce Commission process, for example, shows some of the misleading tactics this industry uses. (8) There is misleading industry material still online today that the Ministry of Health Compliance Panel had ask to be removed two and half years ago - the Commerce Commission had knowledge of that particular situation, too, prior to releasing their draft decision.

It is problematic enough that the Commission won't act on this misleading commercial activity. But for them to also frame it as "beneficial" and "information" for citizens? The Commerce Commission appears unable to empathise with the potential message-interpretations made by women trying to establish breastfeeding in a national setting

where a high-initiation/low-continuation pattern of breastfeeding rates strongly indicate that breastfeeding knowledge and support is poor. The Commission seems unaware of how existing misleading industry material does not align with CRC Article 24.2 (e), when even it's own draft decision shows us that with every marketing dollar it spends, the formula industry currently recoups that money 120%.

Regarding support on the advantages of hygiene, as per CRC Article 24:

The way the Commission's draft decision presents the ability of parents to stop sterilising formula equipment at the 3 month mark as a "benefit" example does appear an unfortunate focal point to establish. The health of formula fed infants is highly reliant on hygienic product preparation, so shouldn't supportive discourse prevail in publicly available government department documents on the hygiene matter? And also, why are the Commission not instead calculating the required time, effort and financial outlay involved in appropriate formula preparation as a "detriment" occurring when breastfeeding is replaced by formula, rather than how they calculate the need to no longer sterilise bottles after three months as a "benefit"?

Regarding the imperative to "combat disease and malnutrition... through the provision of adequate nutritious foods... taking into consideration the dangers and risks of environmental pollution", as per CRC Article 24.2(c) - and the globally-agreed Sustainable Development Goals:

It does seem to be a problematic oversight that the Commission's draft decision fails to make any calculations on the environmental pollution that occurs when formula replaces breastfeeding. The Commission has made no move to calculate the energy costs of the production of breastmilk substitutes - the amount of water used, the chemicals, the trees and the other resources used for packaging and promotion, the energy for sterilizing water for breastmilk substitute preparation, the carbon footprint of bottle and teat production and distribution, etc.

It has been calculated elsewhere that for each 1 kg of powdered milk production and processing, 21.8 kg CO₂-eq. of GHG is emitted, and 4,700 litres of water used - and it appears that is without calculating the additional processing, distribution, preparation etc. involved in getting that milk powder made into and consumed as infant formula (e.g. getting the added vitamins and minerals extracted however and transported from wherever, etc). (9)

Breastfeeding, on the other hand, has been identified as very environmentally sustainable; it has zero carbon footprint and leaves zero waste. The lactational amenorrhea that results from breastfeeding can see the return of menses delayed by an average of 14 months, meaning fewer manufactured menstrual pads and tampons in landfills. And as breastfed babies need fewer nappy changes, that means fewer manufactured disposable nappies in landfills too. (9)

References:

- (1) https://comcom.govt.nz/__data/assets/pdf_file/0028/93763/Draft-determination-on-the-Infant-Nutrition-Council-application-27-August-2018.pdf - all documents at <https://comcom.govt.nz/case-register/case-register-entries/infant-nutrition-council-limited>
- (2) <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- (3) http://www.who.int/nutrition/publications/code_english.pdf
- (4) <http://apps.who.int/iris/bitstream/10665/260137/1/9789241513470-eng.pdf?ua=1>
- (5) http://www.who.int/nutrition/topics/WHO_brief_fufandcode_post_17July.pdf
- (6) <https://www.health.govt.nz/system/files/documents/publications/food-and-nutrition-guidelines-healthy-infants-and-toddlers-revised-dec12.pdf> pages 37 and 40
- (7) <https://www.bbc.co.uk/news/business-44765890>
- (8) https://comcom.govt.nz/__data/assets/pdf_file/0030/86178/Julie-Fogarty-Submission-on-Infant-Nutrition-Council-application-3-July-2018.pdf
- (9) <http://ibfan.org/docs/FormulaForDisaster.pdf>

