



Commerce Commission's Draft Determination: Infant Nutrition Council's (INC) application to extend the restrictions on advertising and marketing in the INC Code to cover infant formula products for children aged up to 12 months of age

To the: Commerce Commission

This submission is made by Women's Health Action Trust

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Thank you for providing the opportunity for feedback on the request to the Commerce Commission, from the Infant Nutrition Council (INC), seeking authorisation of a restrictive trade practice.

Introduction:

This submission is made on behalf of Women's Health Action Trust. Women's Health Action (WHA) is a women's health promotion, information and consumer advisory service. We are a non-government organisation that works with health professionals, policymakers and other not for profit organisations to inform government policy and service delivery for women.

We provide evidence-based analysis and advice to health providers, NGOs and DHBs, the Ministry of Health, and other public agencies on women's health (including screening), public health and gender and consumer issues with a focus on reducing inequalities. We have a special focus on breastfeeding promotion and support, women's sexual and reproductive health and rights.

This submission is informed by our extensive background in maternal and child health promotion, policy analysis and through our knowledge and understanding of the spirit and intent of the International Code of Marketing of Breast-milk Substitutes, and the New Zealand Ministry of Health Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0-2): A Background Paper, (2008). **Please note** that in addition to the views of Women's Health Action, aspects of this submission represent the views of wider networks with whom we are involved including:

- Health Professionals (including midwives and lactation consultants)
- Parents and caregivers
- Tamariki Ora providers (Including Māori and Pacific Providers)
- Public health and not-for-profit sector
- Breastfeeding support services

Overview:

Women's Health Action supports the Infant Nutrition Council (INC) application and the Commerce Commission's draft Determination for the INC application to extend the restrictions on advertising and marketing in the INC Code to cover infant formula products for children aged up to 12 months of age, and to revoke the authorisation the Commerce Commission granted in 2015.

The marketing of breast-milk substitutes presents an ongoing barrier to the protection, promotion and support of breastfeeding¹. Women's Health Action continues to recommend that the New Zealand government enact the International Code of Marketing of Breast-milk Substitutes and subsequent, relevant, World Health Assembly resolutions into regulation and legislation. This move would enable the New Zealand government to meet their international obligations and align the marketing of infant formula to reflect the original intent of the Global Strategy².

The interpretation of the International Code used in New Zealand and the marketing of infant formula is not a commercial decision alone. Its consideration needs to relate to the impact on the public, including the economic burden and poorer population health outcomes of not protecting breastfeeding.

The New Zealand Ministry of Health highlighted the significant contribution of breastfeeding to optimal nutrition, and protection from a wide range of diseases and infections including positive contributions to the reduction of obesity, the incidence and impact of cancer, cardiovascular disease and diabetes.³

We believe there is robust evidence to support claims made in the INC application that, in this case, the public benefit of restrictive practices (by way of the INC Code) to the New Zealand public are greater than any detriments of lessening competition through restrictive practice.

However, it is important to note that these restrictions only apply to members of INC. Meaning that current and future competitors (non-INC members) can continue inappropriate marketing practices. Women's Health Action considers that the greatest public benefit would be gained by regulation of all companies manufacturing and marketing Infant Formula in Aotearoa New Zealand.

Failing any impending regulatory measures being implemented by the government, support for the application for authorisation made by INC is necessary, as it is in New Zealand's health and economic interests to protect breastfeeding in any way possible by limiting the marketing of infant formula.

Conclusion:

Due to our concern about the wider health and economic implications of not supporting the limitation of the marketing of infant formula, and in the absence of appropriate and robust regulation and legislation to restrict marketing practices of all marketers and manufactures of all breast-milk substitutes in Aotearoa, Women's Health Action supports the INC application for authorisation. We consider that if the INC code of practice was to be disestablished, by being deemed anti-competitive, there would be an urgent need for government intervention to implement regulatory measures.

¹ Smith, J., Galtry, J., & Salmon, L. (2014). Confronting the formula feeding epidemic in a new era of trade and investment liberalization. *Journal of Australian Political Economy*, 73:132-170.

² World Health Organization. (2003). *Global Strategy for Infant and Young Child Feeding*. World Health Organization: Geneva.

³ Ministry of Health. (2007). *Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand*. Wellington, MOH.