

6 November 2023

To

Registrar
New Zealand Commerce Commission
PO Box 2351
Wellington 6140

From

Emily Tyler
Anna Parker
Susie Kilty

By Email

registrar@comcom.govt.nz

Dear Registrar

Infant Nutrition Council Limited – submission on Addendum to Draft Determination

1. We are writing on behalf of Infant Nutrition Council Limited (**INC**) to make a submission on the Commerce Commission's addendum to its draft determination on INC's application for authorisation for its members (current and future) to enter into and give effect to an arrangement under which INC Members restrict their advertising and marketing activities for infant formula products for infants up to 12 months old.
2. INC agrees that the revised proposed clause 6.6 set out in our letter to the Commission dated 27 October 2023 does not impact the Commission's draft determination that the proposed arrangement will result, or be likely to result, in such a benefit to the public that it should be permitted (as it does not materially impact the Commission's assessment of the public benefits and detriments of the proposed arrangement).
3. INC notes that:
 - (a) the revised proposed change makes the INC Code more consistent with both the WHO Code and Australia's MAIF Agreement, which do not limit donations of infant formula to times of emergency relief or poverty; and
 - (b) the INC Code relates to and binds manufacturers and marketers of infant formula, and does not relate to or impact health agencies and practitioners' compliance with the Ministry of Health's *Position Statement: Infant Feeding in an Emergency for Babies Ages 0-12 Months* (which is directed at agencies, health practitioners, and emergency responders involved in the emergency response and how they should manage donations of infant formula during the emergency).
4. The draft addendum states that the Commission proposes to grant an authorisation in respect of the specific articles within the Proposed 2023 Code that are the subject of INC's application (amended to include revised proposed clause 6.6). INC submits that it would be preferable for the authorisation to be expressed as being for the restrictions described in paragraph 4 of the application as embodied in Articles 5.1, 5.3, 5.4, 5.5, 6.5, 7.2 and 7.3 of the INC Code (and 6.6 if

the Commission characterises Article 6.6 as being a cartel provision), rather than the articles themselves. This would mean that minor changes that do not affect the nature of the restriction (for example, changing the term "mothers of infants" to "parents of infants") could be made without requiring authorisation.

5. Please let us know if you have any questions.

Yours sincerely

A black rectangular redaction box covering the signature of Anna Parker.

Anna Parker
Special Counsel

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