

14 September 2018

Registrar
Commerce Commission
registrar@comcom.govt.nz

Dear Sir/Madam

Subject: Submission on the Commerce Commission draft decision to grant authorisation to members of the Infant Nutrition Council to restrict their advertising and marketing of infant formula for infants up to 12 months of age.

The Ministry of Health (the Ministry) is responsible for implementing and monitoring the World Health Organization's 'International Code of Marketing of Breast-milk Substitutes' in New Zealand (The Code in New Zealand). It is primarily implemented through the 'Code of Practice for Health Workers' and the 'Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand'. Both of which are self-regulatory codes of practice and thereby rely on the willingness and commitment of key stakeholders to be effective.

Breastfeeding is widely recognised as a way to improve the health and nutrition of infants, young children, and their mothers. Regulating the marketing of infant formula products is part of creating an overall environment that enables mothers to make the best possible feeding choice, based on impartial information free of commercial influence, and to be fully supported in doing so. This along with other Government initiatives, including Baby Friendly Hospital accreditation, providing a free Well Child Tamariki Ora Service to all parents and extending parental leave to 26 weeks by 2020, contribute to protecting, promoting and supporting breastfeeding.

The Ministry supports the Infant Nutrition Council's (INC) application and the Commerce Commission's draft determination which is likely to have significant public health benefits arising from higher breastfeeding rates. The promotion of infant formula and follow-on formula can negatively affect a mother's decision to breastfeed or the duration of breastfeeding. Given that infants are especially vulnerable and recognising that unnecessary or improper use of infant formula may result in health problems, usual marketing practices are unsuitable for these products.

Key benefits arising from the authorisation include:

- Protection of breastfeeding throughout the first year of an infant's life.
- Contributes to a supportive environment that regards breastfeeding as the societal norm.
- Prohibits infant formula companies from using sophisticated marketing techniques that can undermine a mother's confidence to breastfeed her baby.
- Is consistent with national nutrition guidelines for infant feeding in New Zealand (and Australia) which recommend that babies are fed only breast milk for around the first 6 months of life followed by continued breastfeeding, with appropriate complementary foods, until at least 1 year of age, or beyond.
- Demonstrates the formula industry's commitment to supporting the government's public health goals of promoting, protecting and supporting breastfeeding by not marketing infant formula to the public.
- Strengthens New Zealand's implementation of the World Health Organization's 'International Code of Marketing of Breast-milk Substitutes'.

The Ministry appreciates that there is a legitimate market for infant formula products as some mothers do not breastfeed or only do so partially. However, the Ministry does not consider that authorisation will have a detrimental effect on consumers of infant formula. For a start, the practice of introducing follow-on formula, in place of standard infant formula, from six months together with complementary foods, is unnecessary. If an infant is thriving on standard infant formula and complementary foods, there is no advantage in changing to a follow-on formula. This position is supported by the World Health Organization¹. Secondly, there are other sources of information available including your health care practitioner, the Ministry and infant formula manufacturer websites for specific information about their products. The authorisation is beneficial in that it facilitates the dissemination of objective and factual information on infant feeding, which a health practitioner is best positioned to provide.

The Ministry notes the Commerce Commission is proposing to grant authorisation for a set period of five years. The Ministry asks that the five year period starts once the proposed INC Code is in place. The Ministry understands the INC has requested a 2-year transition period from the date of authorisation in order to update their marketing materials and infant formula product labels as required.

The Ministry has identified some inaccuracies in the information contained in the Commission's draft determination and has made suggested changes for your consideration. See attached.

Thank you for the opportunity to make a submission.

Yours sincerely



Dr Caroline McElnay
Director of Public Health

¹ http://www.who.int/nutrition/topics/WHO_brief_fufandcode_post_17July.pdf