



To: Commerce Commission New Zealand- Te Komihana Tauhokohoko
Re: Authorisation of a 'restrictive trade practice' on infant formula (INC code)

24 October 2023

Thank you for the opportunity to give feedback on the request from the Infant Nutrition Council (INC) to restrict their advertising and marketing of formula products for infants aged up to 12 months old.

Background

The New Zealand Breastfeeding Alliance (NZBA) is a collaborative of 34 breastfeeding member organisations that protects, promotes and supports breastfeeding in Aotearoa New Zealand. The NZBA was established in 1999 and is primarily funded by Manatū Hauora/Ministry of Health and Te Whatu Ora to administrate the World Health Organisation (WHO)/UNICEF's Baby-Friendly Hospital Initiative (BFHI) in Aotearoa New Zealand and to provide a national advocacy platform for projects that improve breastfeeding rates. NZBA recognises and respects the principles of Te Tiriti o Waitangi by ensuring that we are advocating for tino rangatiratanga, kaitiakitanga, kotahitanga, manaakitanga and ōritetanga. Te Tiriti o Waitangi is an integral part of BFHI and evidence of the service's commitment to Te Tiriti in practice is essential. This includes a commitment to addressing not only how māmā and their whānau are cared for whilst they are in the service (provided with culturally and clinically safe breastfeeding experiences) but also a commitment to overall Māori health.

NZBA notes that the public health impacts of formula replacing breastfeeding are not shared equally across the population but disproportionately affect groups who are ethnically and socio-economically marginalised. Māori and Pacific peoples continue to bear the burden of the public health impacts of formula use in Aotearoa New Zealand.

Baby Friendly Hospital Initiative and The International Code

The Baby Friendly Hospital Initiative is a set of evidence-based, clinical standards to provide mothers/parents and their infants with the best start in life by protecting and promoting breastfeeding, increasing the likelihood that infants will be breastfed exclusively. BFHI accreditation remains one of the key outcomes of [Rautaki Whakamana Whāngote- National Breastfeeding Strategy for New Zealand Aotearoa](#), specifically [Outcome 4](#).

BFHI has two main goals:

- 1) To encourage and facilitate the transformation of services in accordance with the WHO and UNICEF Ten Steps to Successful Breastfeeding and on-going maintenance of these evidence-based clinical standards.
- 2) To end the practice of distribution of free and low-cost supplies of breastmilk substitutes to hospitals and health care services in accordance with the International Code of Marketing of Breastmilk Substitutes and relevant World Health Assembly resolutions (The Code). Step 1A of the Ten Steps to Successful Breastfeeding requires that maternity services *comply fully with the International Code of Marketing of Breastmilk Substitutes and relevant World Health Assembly resolutions.*

It is important to note that the National Breastfeeding Strategy also outlines as a key priority that *policies, guidelines, regulations and frameworks protect, promote and support breastfeeding and optimal infant feeding.* A [key point](#) under this priority is to “review relevant legal measures currently in place to strengthen the WHO Code and to better align with the WHO International Code and subsequent WHA resolutions.”

The International Code of Marketing of Breastmilk Substitutes was adopted in 1981 by the World Health Assembly to promote safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breastmilk substitutes when these are necessary. Subsequent, relevant World Health Assembly (WHA) resolutions have been adopted since and have the same legal status as The Code, clarifying and extending certain provisions. For Code implementation, both The Code and resolutions are equally relevant. One of the main principles of The Code and relevant WHA resolutions is that health care services should not be used for the purpose of promoting breastmilk substitutes, feeding bottles, teats, or pacifiers.

It is noted on the Manatū Hauora website that “New Zealand is a signatory to the International Code of Marketing of Breastmilk Substitutes and that they remain committed to the International Code’s aims of:

- providing safe and adequate nutrition for infants by protecting and promoting breastfeeding
- ensuring the proper use of breast milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution.”

Concerns

While “the INC considers there has been no significant changes in the infant formula industry or in the actions of its members,” this is not entirely accurate. Despite the milestone of 40 years of The Code, the US\$55 billion infant formula and baby food industries continue to use many of the promotional tactics they used in the days before The Code was implemented. They have become even more sophisticated in pushing breastmilk substitutes

through online clubs, targeted ads, and social media “influencers.” These systematic and unethical marketing strategies are used by the infant formula industry to influence parents’ infant feeding decisions.

Recently the Seventy-fifth World Health Assembly requested that the WHO Director General develop guidance for Member States on regulatory measures aimed at restricting the digital marketing of breastmilk substitutes, so as to ensure that existing and new regulations designed to implement The Code adequately address digital marketing practices for the Seventy-seventh World Health Assembly in 2024. They note that:

“Digital marketing technologies have created new marketing tools that are powerfully persuasive, extremely cost effective and often not easily recognizable as breast-milk substitutes promotions. Digital marketing is not always easily recognisable as advertising or promotion and can deliver breast-milk substitutes promotions covertly. It also involves a broader range of actors than those involved in traditional marketing practices. Applying the Code to digital environments requires the development of specific regulatory mechanisms, coordination across a broader set of government bodies, and the establishment of specific legal duties on the range of entities involved in the digital marketing value chain.”

The NZBA has recently supported the [Draft guidance on regulatory measures aimed at restricting digital marketing of breastmilk substitutes](#). This guidance represents a key component in strengthening The Code for the evolving digital age and will be presented to WHO’s Technical Advisory Group for consideration.

Recommendations

We agree that the Commerce Commission should grant authorisation to the current and future members of Infant Nutrition Council Limited (INC) to restrict their advertising and marketing of formula products for infants aged up to 12 months old. However, we present some further key recommendations related to this authorisation:

1. NBZA strongly supports the regulation of all breastmilk substitutes, as per the International Code of Marketing of Breastmilk Substitutes and subsequent, relevant WHA resolutions. Given that the INC Code of Practice, the Health Workers’ Code and the Advertising Standards Code are voluntary and self-regulatory, we argue for the full implementation of The International Code.
2. NZBA strongly recommends the inclusion of toddler milks in regulatory measures. Toddler milks also are an unnecessary part of infant nutrition and fall well within the scope of the International Code.
3. NZBA strongly recommends that consumers need to be given a warning on the labels of infant formula and follow-on formula about safety. Consumers need to know that there is a risk of microbiological contamination such as *E.sakazakii* and other relevant microorganisms in powdered infant formula.

4. NZBA recommends that digital marketing technologies be specifically addressed in the authorisation.
5. NZBA recommends that the Commerce Commission seek further advice from Manatū Hauora in this matter as this requires an overview from the perspective of an entity committed to public and population health and one that does not have commercial interests. A national Infant and Young Child Feeding Committee has been recently established and would be well equipped to offer expert advice on this manner.

Again, ngā mihi nui for the opportunity to make a submission on this authorisation request.

Nā mātou noa, nā

New Zealand Breastfeeding Alliance

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