

25 October 2023

**To**  
Registrar  
New Zealand Commerce Commission

**From**  
Emily Tyler  
Anna Parker  
Susie Kilty

**By Email**  
registrar@comcom.govt.nz

Dear Registrar

## **Infant Nutrition Council Limited –submission on draft determination**

1. We are writing on behalf of Infant Nutrition Council Limited (**INC**) to make a submission on the Commerce Commission's 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 members restrict their advertising and marketing activities for infant formula products for infants up to 12 months old.
2. Thank you for the opportunity to submit on the draft determination. As a starting point, INC supports the draft determination. It has two specific comments on the time frame of the authorisation and the scope of the authorisation, which are set out below.

### *INC supports no time limit on authorisation*


3. For the reasons set out in paragraphs 67 to 68 of the application, INC supports the Commission's draft determination to not impose a time limit on the authorisation.

### *INC submits that scope of authorisation should be clarified*

4. The summary of the application on the front page provides that INC on behalf of its members (current and future) has applied for authorisation of an arrangement allowing INC's members to restrict their advertising and marketing activities for formula products for children up to 12 months of age. This is consistent with INC's application.
5. However, the scope of the authorisation is described differently in other areas of the document, with reference specifically to the "Proposed 2023 Code". For example:
  - (a) Paragraph 6: "The proposed arrangement involves agreeing to adhere, and give effect, to a Code of Practice for the Marketing of Infant Formula in New Zealand under which INC members agree to restrict advertising and marketing practices for formula products for infants aged up to 12 months old (the Proposed 2023 Code)";
  - (b) Paragraph 11: "The Application relates to the authorisation of the Proposed 2023 Code, which contains only minor changes and is almost identical to the code of practice that the Commission authorised in 2018"; and

- (c) Paragraph 20: "The INC seeks authorisation under sections 58(1) and (2) of the Act, on the basis that section 27 of the Act might apply to Proposed 2023 Code".
- 6. INC submits that the draft determination should be clearer that the Commission is authorising an arrangement under which members (current and future) restrict their advertising and marketing activities for infant formula products for infants up to 12 months old as embodied in the INC Code (rather than the 2023 INC Code itself).
- 7. This will provide sufficient clarity for INC that it is able to make changes to the INC Code in the future that do not relate to or impact the advertising and marketing restrictions, without requiring further authorisation or an amendment to the authorisation. That is, it could be that over time INC wishes to make changes of provisions of the Code that do not raise competition issues or contain the advertising or marketing restrictions, and it would not want such changes to mean that the authorisation was no longer valid. Examples of such provisions include:
  - (a) Articles 4.1 to 4.4, which relate to the information that must be provided by those who provide infant formula;
  - (b) Articles 9.1 to 9.4, which relate to labelling of infant formula and requires the labelling of infant formula to comply with the Australia and New Zealand Food Standards Code; and
  - (c) Article 10.1, which requires infant formula composition and quality to comply with the Australia and New Zealand Food Standards Code.
- 8. To the extent changes to the Code that do not contain the restrictions were proposed in future, those provisions would of course be subject to the Commerce Act so further authorisation would be required if a change raised competition issues.
- 9. Please let us know if you have any questions.

Yours sincerely



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