

27 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 – minor amendments to authorisation application

1. We are writing on behalf of Infant Nutrition Council Limited (**INC**) to make minor amendments to INC's application for authorisation registered with the Commerce Commission on 22 August 2023.
2. In its authorisation application, INC advised that one of the proposed changes to the INC Code since it last sought authorisation in 2018 was to clause 6.6 to enable donations of infant formula in emergencies to health organisations and food charities.
3. Following discussions with the Ministry of Health and the Ministry of Primary Industries, INC wishes to amend this proposed change to enable donations of infant formula to health organisations only (who may then provide donations of infant formula to food charities). The current wording, the proposed change in the application, and the revised proposed change is attached as Appendix One.
4. The revised change preserves the position that donations of infant formula can only be made to health organisations, but changes the scope of the provision to make it consistent with the WHO Code, so that it allows donations to health organisations to support safe and adequate nutrition (and not just in times of emergency relief or poverty).
5. Given that the change is minor, and that clause 6.6 is not referred to in the Commission's assessment of the application in its draft determination, INC does not consider that this change impacts the Commission's assessment of the application.
6. Finally, as set out in the application, clause 6.6 is not listed in the restrictions for which INC is seeking authorisation, on the basis that it is not a provision to which Part 2 of the Commerce Act applies. This includes because INC Members will not be acting "in competition" when making donations.

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7. INC would also like to change all references to "*The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand*" to "*The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in Aotearoa New Zealand*".
8. Please let us know if you have any questions.

Yours sincerely

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Special Counsel

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Appendix One: Proposed changes to clause 6.6 of the INC Code

Current INC Code:

If in circumstances of emergency relief or poverty there are donated supplies, these need to meet the following conditions:

- they are given to a single designated health agency to control, and are not provided directly from industry to consumer;
- they are for infants who are medically required to be fed, or are already being fed infant formula;
- the supply is continued for as long as the infants concerned need it;
- the supply is not used as a sales inducement;
- in the case of emergency relief, the donations are in accordance with national emergency preparedness plans and supporting documents.

Proposed change in INC's authorisation application:

~~If~~ in circumstances of emergency relief or poverty, donations of infant formula may be made to support safe and adequate nutrition for infants. ~~there are~~ Ddonated supplies, ~~these~~ need to meet the following conditions:

- they are given to a ~~single designated~~ health organisation~~agency~~ or food charity to control, and are not provided directly from industry to consumer;
- they are for infants who are medically required to be fed, or are already being fed infant formula;
- the supply is continued for as long as the infants concerned need it;
- the supply is not used as a sales inducement;
- in the case of emergency relief, the donations are in accordance with national emergency preparedness plans and supporting documents.

Revised proposed change (showing mark ups to the current provision):

Donations of infant formula may be made to support safe and adequate nutrition for infants. ~~If in circumstances of emergency relief or poverty there are~~ Ddonated supplies, ~~these~~ need to meet the following conditions:

- they are given to a ~~single designated~~ health organisation~~agency~~ to control and distribute appropriately, including to food charities, and are not provided directly from industry to consumer;
- they are for infants who are medically required to be fed, or are already being fed infant formula;
- the supply is continued for as long as the infants concerned need it;
- ~~the supply is not used as a sales inducement;~~
- ~~in the case of emergency relief, the donations are in accordance with national emergency preparedness plans and supporting documents.~~