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**SUBMISSION ON COMMERCE COMMISSION NEW ZEALAND'S DRAFT
DETERMINATION – INFANT NUTRITION COUNCIL AUTHORISATION
APPLICATION**

**To: Registrar
Commerce Commission New Zealand
44 The Terrace
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Details of Submitter: The Southern District Health Board

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Introduction

Southern District Health Board (Southern DHB) presents this submission through its Public Health Service. This Service is the principal source of expert advice within Southern DHB regarding matters concerning Public Health. Southern DHB has responsibility under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities. Additionally there is a responsibility to promote the reduction of adverse social and environmental effects on the health of people and communities. With 4,250 staff, we are located in the lower South Island (South of the Waitaki River) and deliver health services to a population of 306,500.

Public health services are offered to populations rather than individuals and are considered a “public good”. They fall into two broad categories – health protection and health promotion. They aim to create or advocate for healthy social, physical and cultural environments.

This submission provides general and specific comments on the proposal and makes recommendations.

General Comments

The Southern DHB wishes to highlight the value of working together with government to consider the impact of various activities and plans on population health. The positive community health outcomes that can accrue when government is cognisant of its potential to impact upon the health of citizens cannot be overstated.

There are many documented benefits of breastfeeding.^{1,2,3,4} For children it helps protect against diarrhoea, respiratory infections and allergic diseases and may also have longer-term health benefits such as reducing the risk of overweight and obesity. It has also been linked to higher IQ scores. Mothers also benefit from breastfeeding through a reduced risk of ovarian cancer, osteoporosis and hip fracture later in life. In addition breastfeeding has social and economic benefits.

The Southern DHB strongly endorses the World Health Organisation (WHO) global public health recommendation that infants should be exclusively breastfed for the first six months and then receive nutritionally adequate and safe complementary foods while continuing to breastfeed up to two years of age or beyond.⁵ Currently in the Southern DHB region only 21% of infants are being exclusively breastfed at 6 months.⁶

The Southern DHB's Public Health Service has a contractual obligation to support, promote and protect breastfeeding. In terms of this submission, promoting the health benefits of breastfeeding and creating an environment supportive of breastfeeding through policy development are at the forefront.

The Southern DHB considers that the implementation of the WHO *International Code of Marketing of Breastmilk Substitutes* (International Code)⁷ and subsequent, relevant World Health Assembly (WHA) Resolutions, in New Zealand, will help create a supportive environment for breastfeeding.

Specific Comments

The Southern DHB supports the Commerce Commission's draft determination to grant authorisation for the Infant Nutrition Council's application to restrict the marketing of infant formula for children less than six months of age. The Southern DHB is particularly pleased to note that although the Commission concluded that the arrangement is likely to lessen

¹ Horta, B. L., Victora, C. G. 2013. *Short-term effects of breastfeeding: a systematic review on the benefits of breastfeeding on diarrhoea and pneumonia mortality*. Geneva, WHO.

² Horta, B. L., Victora, C. G. 2013. *Long-term effects of breastfeeding: a systematic review*. Geneva, WHO.

³ American Academy of Paediatrics. 2012. Policy statement: Breastfeeding and the Use of Human Milk. *Pediatrics* 129(3), e821-e847. Available at <http://pediatrics.aappublications.org/content/129/3/e827.full.html> (Accessed 10 March 2015).

⁴ Ministry of Health. 2013. *The Benefits of Breastfeeding*. Available at <https://www.health.govt.nz/your-health/healthy-living/babies-and-toddlers/breastfeeding/benefits-breastfeeding>. (Accessed 12 March 2015).

⁵ WHO/UNICEF. 2003. *Global Strategy for Infant and Young Child Feeding*. WHO, Geneva.

⁶ Royal New Zealand Plunket Society (Inc), PCIS Statistics, July 2014

⁷ World Health Organisation (WHO) (1981), *International Code of Marketing of Breastmilk Substitutes*, WHO, Geneva.

competition it considered the public health benefits of the arrangement and decided to grant the authorisation.

Footnote 6 The Southern DHB appreciates that the Commerce Commission “cannot authorise a broader or more inclusive arrangement than was submitted in an application”, however the Southern DHB wishes to make the following points:

Section 11, Page 5 “The Arrangement only applies to products classified as infant formula...”. According to the Draft Determination infant formula is intended for infants from birth to the age of approximately six months. Follow-on formula and toddlers milk are intended for use after 6 months and these products can still be marketed. The Southern DHB is concerned that the marketing of follow-on formula and toddlers milk will undermine breastfeeding in children over six months as mothers exposed to marketing of these milks may be more likely to give up breastfeeding. In addition, because the labels of infant formula, follow-on formula and toddlers milk are often similar mothers can interpret promotion of follow-on milk and toddler milk as marketing for infant formula and this can result in more positive attitudes to formula feeding.^{8,9} Again this could influence mothers to give up breastfeeding.

Section 13, Page 5 “Retailers are entirely unimpeded in their ability to independently advertise or market infant formula”.

The Southern DHB is concerned that the Draft Determination will still allow retailers to continue marketing and promoting infant formula with no constraints. Parents and families of infants and young children will still be subject to marketing and promotion of infant formula. This is contrary to the intention of the International Code, which was adopted by New Zealand in 1983.¹⁰

Section 33, Page 8 Only Infant Nutrition Council Limited (INC) members are to adhere to the INC Code and restrict their infant formula marketing activities accordingly. Non members will not be subject to any marketing restraints. While INC members represent over 95% of the volume of infant formula sold there are still more than 40 manufacturers, marketers and importers of infant formula that do not belong to the INC and are free to market and promote infant formula.¹¹ The Southern DHB would prefer that all companies be prevented from marketing and promoting infant formula.

While the Southern DHB recognises that the Infant Nutrition Council Code goes some way towards implementing the International Code in New Zealand and will offer some protection to breastfeeding, the Southern DHB would prefer that the International Code and subsequent, relevant World Health Assembly Resolutions be enacted into regulation and legislation to help protect breastfeeding and ensure the safe and appropriate use of breastmilk substitutes in New Zealand.

⁸ Berry, N.J. 2010. *Got Milk?: The Influence of Toddler Formula Advertising on Attitudes and Beliefs About Infant Feeding*. School of Health Sciences-Faculty of Health and Behavioural Sciences, University of Wollongong.

⁹ Nous Group. 2013. *Review of the effectiveness and validity of operations of the MAIF Agreement*. Department of Health and Ageing, Canberra.

¹⁰ Ministry of Health. 2007. *Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand*. Wellington: Ministry of Health.

¹¹ Infant Nutrition Council. 2014. Commerce Act 1986: Restrictive Trade Practices Section 58: Notice seeking authorisation (Streamlined Process).

Recommendation -

- That the Commerce Commission grant authorisation for the Infant Nutrition Council's application to restrict the marketing of infant formula for children less than six months of age.

Summary

The Southern DHB supports the Commerce Commission's draft determination to grant authorisation for the Infant Nutrition Council's application to restrict the marketing of infant formula for children less than six months of age. However, the Southern DHB would prefer that, in the long term, the International Code and subsequent, relevant World Health Assembly Resolutions be enacted into regulation and legislation to help protect breastfeeding and ensure the safe and appropriate use of breastmilk substitutes in New Zealand.

The Southern DHB does not want to be heard in regards to this submission.

Yours sincerely,

**Christine Quested**

Health Promotion Advisor