

Response to draft determination on application for re-authorisation AA1000534 – Infant Nutrition Council

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Prepared by



Endorsed by



Contact Person: Elizabeth World
Position: Policy Officer
Organisation: Dietitians Australia
Address: 1/8 Phipps Close, Deakin ACT 2600
Telephone: 02 6189 1200
Email: policy@dietitiansaustralia.org.au

A 1/8 Phipps Close, Deakin ACT 2600 | **T** 02 6189 1200
E info@dietitiansaustralia.org.au
W dietitiansaustralia.org.au | **ABN** 34 008 521 480

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Dietitians Australia interest in this consultation

Dietitians Australia is the national association of the dietetic profession with over 7500 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for food and nutrition for healthier people and healthier communities. Dietitians Australia appreciates the opportunity to provide feedback to the Australian Competition and Consumer Commission (ACCC) regarding the draft determination to the Infant Nutrition Council's application AA1000534 for re-authorisation of the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF agreement).

The Accredited Practising Dietitian (APD) program provides an assurance of safety and quality and is the foundation of self-regulation of the dietetic profession in Australia. Accredited Practising Dietitians have an important role to play in education of carers about nutrition for infants and toddlers, including advice about breastfeeding and breast milk alternatives.

This submission was prepared by members of the Dietitians Australia Food Regulatory and Policy Committee and Paediatric & Maternal Health Interest Group following the [Conflict of Interest Management Policy](#) and process approved by the Board of Dietitians Australia. Contributors comprise Dietitians Australia members with wide ranging expertise in areas including public health, food systems, food regulation, paediatric nutrition and academia.

Recommendations

1. The MAIF agreement should not be approved for reauthorisation. Instead,
 - a. The ACCC should recommend that marketing of infant and toddler formulas be covered by legislation, as it does not have scope to address the public health policy issues that are perpetually raised by the MAIF re-authorisation process.
 - b. The WHO Code and WHA resolutions should be legislated as regulations enforceable under Australian law.
2. If the MAIF agreement is to be reauthorised, it must:
 - a. Be renewed for only 2 years while the 2019 Australian National Breastfeeding Strategy is being implemented, including Action 1.2 review of regulatory arrangements.
 - b. Include a condition extending the restrictions on advertising and promotion of infant formula to include all breast milk substitutes as defined by the World Health Organisation, which includes toddler milk products.
 - c. Extend in scope to include (i) marketing of complementary foods for infants, (ii) feed bottles and teats, and (iii) on the promotion and price discounting by retailers, as per the WHO Code and WHA resolutions.
 - d. Be enforceable by law, to uphold the ACCC principle of allowing non-competitive behaviour in the interest of public benefits.
 - e. Be free of conflicts of interest arising in its governance.

Discussion

Breastmilk is best for infant nutrition

Infants in Australia should be exclusively breastfed for the first six months of life, and continue breastfeeding as part of an increasingly diversified diet into the second year of life and beyond. Breastmilk is the best source of nutrition to achieve optimal growth, development and health in early years. The nutrients in breastmilk change as an infant grows and develops, to best meet their nutrition needs into toddlerhood and early childhood. The government recognises this in the Infant Feeding Guidelines¹ and Australian National Breastfeeding Strategy.²

When breastfeeding or breastmilk is not an option, infant formulas can be used under the guidance of appropriately qualified health professionals, particularly dietitians. As an infant grows into toddlerhood, toddler milks become the marketed substitute to breastmilk.

Voluntary self-regulated codes should not substitute legislation

Current voluntary arrangements (ie MAIF agreement) are clearly failing the Australian public. This is recognised by the government in Australian National Breastfeeding Strategy:²

- Objective 4: Strengthen the regulatory arrangements for marketing of infant formula and breastmilk substitutes so that inappropriate marketing and distribution ceases (p11).
- Action 1.2: Review regulatory arrangements for restricting the marketing of breastmilk substitutes (p34).

The MAIF agreement is supposed to be Australia's implementation of the WHO Code on Restriction of Marketing of Breastmilk Substitutes. The WHO Code, which must be considered with World Health Assembly (WHA) resolution 69.9, clearly identify toddler milks suitable for up to 3 years of age as being within the scope of the WHO Code. However, the MAIF agreement does not include toddler milks and thus is clearly not meeting its remit of implementing the WHO Code and providing public benefit.

Further weaknesses of the MAIF agreement were outlined the in PHAA submission³ to the previous round of consultation, repeated here:

- Not all manufacturers and importers are signatories
- Omits prohibition of free and subsidised breast milk substitutes in the health care system
- Omits guidelines for the marketing of bottles, teats and complementary foods
- Omits code for retailers
- Omits prohibition of cross-promotion via marketing of toddler milks
- Not actively enforced by Department of Health, Infant Nutrition Council or other stakeholders
- Significant conflicts of interest in governance and enforcement

These weaknesses undermine the rigour of the MAIF agreement as implementation of the WHO Code, and therefore undermine the notion that application AA1000534 will provide a public benefit.

Toddler milk must be included in marketing regulations

As stated above, the MAIF agreement is Australia's implementation of the WHO Code. The WHO Code, WHA resolutions 69.9 and implementation guidance from WHO⁴ clearly identify toddler milks suitable for up to 3 years of age as being within the scope of the WHO Code. This is recognised in the draft determination (s2.3), which recommends toddler milks should be included under any voluntary or regulatory arrangements.

Inclusion of toddler milk in any voluntary or regulatory arrangements would also address the issue of toddler milk marketing being used to cross-promote infant formula. Marketing of toddler milk and baby foods in Australia increased in 1981 following introduction of the WHO Code.⁵ An example of cross-promotion is line extension, the use of similar branding and logos for formula 'steps' 1, 2 and 3. Permitted marketing of later steps therefore is direct marketing for the earlier steps.

Cross-promotion is identified as an issue by WHO⁶ and the evidence review supporting the Australian National Breastfeeding Strategy, which recommends "there should be no cross-promotion to promote breastmilk substitutes indirectly via the promotion of foods for infants and young children" (p60).⁷

A WHO-commissioned review on harm of infant food marketing found:⁷

- Parents and carers who see marketing for toddler milk believe they have seen marketing for infant formula.
- Toddler formula marketing improves brand image and brand awareness of infant formula brands.
- Reduced advertising of breastmilk substitutes leads to poorer consumer attitudes towards these substitutes and reduced use of substitutes.

To provide a public good, any voluntary or regulatory arrangements on advertising and marketing of breastmilk substitutes must cover all breast milk substitutes as defined by the World Health Organisation, which includes toddler milk products.

Governance of regulatory arrangements should be free of conflicts of interest

The MAIF agreement current governance is by the Infant Nutrition Council, made up of companies who manufacture breastmilk substitutes. The agreement allows for signatories to decide what is covered by the agreement, such as advertising and which products are included. The implications of this conflict of interest are clear when looking at the financial incentives for these companies to cherry-pick the WHO Code and actively promote the breastmilk substitute of toddler milk.

Toddler milk sales in Australia grew immensely in 2020. Euromonitor reported 14% value growth in 2020, worth \$294 million, in powdered follow-on formula for 6-12 month-olds.⁸ Growing-up formula for 12+ month-olds saw a 12% value growth, worth \$375 million in the same year. This demonstrates the clear incentive for manufacturers, who make a massive profit from selling these products, to not prohibit their marketing or advertising, even if this omission means it is failing to meet Australia's international obligations.

Any renewal of voluntary arrangements must be for only 2 years while the Australian National Breastfeeding Strategy is being implemented, including Objective 4 and Action 1.2 regarding review of regulatory arrangements.

References

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