

11 November 2015

David Hatfield
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 260

Submission on the Infant Nutrition Council Limited application for authorisation A91506 and A91507, Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement)

Our organisation focuses on the implementation of the International Code of Marketing of Breastmilk Substitutes (Code) which aims to provide safe and adequate nutrition for infants and young children by protecting breastfeeding. We also conduct surveys on marketing practices of companies which manufacture and distribute baby foods, feeding bottles and teats and we monitor the status of the Code in all countries. ICDC is the global programme office on Code matters for the International Baby Food Action Network (IBFAN).

It has come to our attention that the Australian Competitor and Consumer Commission (ACCC) has issued a draft determination to re-authorise, for 10 years, the MAIF Agreement and associated guidelines, on the application of the Infant Nutrition Council.

We have read the draft determination and the submissions of the **Australian Breastfeeding Association (ABA)**, **Smith et al** and other interested parties. Seen from the international perspective and from our own monitoring of marketing practices in Australia, the submissions made by ABA and Smith et al. are cogent and valid. If taken on board, their proposals would serve to protect breastfeeding in a better way than the current MAIF Agreement, if prevailing marketing practices and breastfeeding rates are anything to go by.

We regret that ACCC has dismissed or discounted the submissions of ABA and Smith et al for re-authorisation to be granted on an interim basis of 1 -2 years. An interim approach would allow the Australian Government to respond to WHO recommendations that will be finalised in 2016. It would also enable the Australian Government to consider a broader, stronger legislative instrument to give effect to the Code and relevant subsequent World Health Assembly resolutions in a timely and effective manner - something the MAIF Agreement did not accomplish in the past.

Despite assurances that the MAIF Agreement can be reviewed post re-authorisation, once finalised, the draft determination would serve as a powerful endorsement of an inadequate national measure that would be difficult to shift.

We therefore urge the ACCC to convene a pre-decision conference to enable further discussion regarding the importance of an effective regulatory system to protect child health. The draft determination as it stands represents a missed opportunity for Australia to act in the best interest of child health.

At this juncture, we wish to point out that Australia has ratified the Convention of the Rights of the Child (CRC). ACCC should, therefore, consider Australia's commitments under the CRC when making decisions under its national laws. In this regard, we would like to point out that a number of articles in CRC are supportive of the intent of the Code, particularly the right of children to the highest attainable standard of health (Article 24).

General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health reaffirms the importance of protecting, promoting and supporting breastfeeding during the first 2 years of life or beyond and State Parties are required to introduce into domestic law internationally agreed standards concerning children's right to health including the Code and relevant subsequent World Health Assembly resolutions.

We submit that the draft determination by the ACCC to re-authorise, for 10 years, the MAIF Agreement and associated guidelines represents a failure on the part of the Australian Government to protect the right of the child to the best attainable standard of health as enshrined in Article 24 of the CRC. This is particularly significant as the CRC Committee had released General Comment No. 16 (2013) which highlights the State's obligations to ensure the protection of children from the aggressive efforts of the business sector in marketing.

In addition, the General Assembly of the United Nations, had as recent as 20 July 2015, issued a report from Mr Darius Puras, the Special Rapporteur on the Right to Health, in accordance with Human Rights Council resolutions 6/29 and 15/22. On the matter of early child development and survival, this report reiterates that States should introduce into domestic law, implement and enforce the International Code on Marketing of Breastmilk Substitutes (paragraph 105).

We therefor urge the ACCC to re-visit its draft determination in the light of Australia's obligation under the CRC and other human rights instruments to which it is party to.

Yours faithfully,

A handwritten signature in black ink that reads "Annelies Allain". The signature is written in a cursive, flowing style.

Annelies Allain
Director