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**Australian
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17 December 2015

Ms Fiona Crosbie
Partner
Allens

By email: Fiona.Crosbie@allens.com.au

Dear Ms Crosbie

**Infant Nutrition Council applications for authorisation A91506 – A91507
- issues arising from pre decision conference**

Please find attached a copy of the meeting record from the Pre-Decision Conference held in relation to the above authorisations on 14 December 2015.

As you aware, a number of issues were discussed at the conference. The ACCC considers some of those issues are relevant to its assessment of the applications and some are outside of the scope of what we can take into account.

The ACCC invites INC to respond to any of the issues raised at the PDC, and in particular to the following:

1. that the ACCC should only grant authorisation for two years to allow recommendations from the current WHO/WHA deliberations to be considered and potentially adopted in Australia
2. that the MAIF Agreement in its current form is not fulfilling its purpose of preventing direct marketing of infant formula to consumers, because the widespread marketing of toddler milk products is effectively marketing of infant formula. This occurs through similar packaging of products and using sequential numbering of a range of products through which infants “progress”. Toddler milk marketing is directed (through social media) to the parents of very young babies
3. the processes and decisions of the Complaints Tribunal are not effective and do not comply with ACCC guidelines on oversight of industry codes
4. infant formula is supplied to hospitals at very low prices, creating a disincentive for health systems to develop or focus on alternatives such as pumping or human milk banking
5. free infant formula samples are provided to health care professionals, including pharmacists and are being given to parents in a manner that discourages breastfeeding

6. a list of signatories to the MAIF Agreement is not easily available to the public

Can you please provide a detailed description of the Tribunal's complaint handling processes, including how complaints are determined to be in or out of scope. Can you please also provide a list of all complaints made to the Tribunal since it was established, how those complaints have been dealt with and what the outcomes were.

Given the breadth and significance of issues raised, the ACCC will need some time to properly consider them and wants to provide sufficient time for the applicants to respond fully. As a result, I expect the ACCC will be unable to make its Final Determination on these applications by the previously foreshadowed date in February 2016. I note that, as the applications are for revocation and substitution, no statutory timeframe applies within which the ACCC must make its decision. The date of the ACCC's Final Determination will depend on resolution of the issues identified in this letter.

The ACCC would be happy to meet with the Infant Nutrition Council to discuss these issues and potential ways forward if that would be helpful.

Since the current authorisation expires soon, the ACCC has decided to grant interim authorisation in respect of the application for authorisations lodged by the Infant Nutrition Council Ltd on 20 July 2015, and to suspend operation of authorisations A90539 and A90540. Interim authorisation of A91506 and A91507 and suspension of authorisations A90539 and A90540 and will come into effect on 31 December 2015.

The interim authorisation is granted to current and future members of the Infant Nutrition Council for the continued operation of the Marketing in Australia of Infant Formula Agreement, in the form authorised in A90539 and A90540. Interim authorisation will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the Competition and Consumer Act 2010 while the ACCC considers and evaluates the merits of the application. The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.

This letter has been placed on the ACCC's public register. If you would like to discuss any aspect of this matter, please do not hesitate to contact Hannah Ransom on (02) 6243 1255.

Yours sincerely



Baethan Mullen
Acting General Manager
Adjudication Branch