

Submission of Rachel McDonald to the ACCC
Re Proposed Extension of the MAIF Agreement

13 December 2015

Adjudication Branch
Australian Competition and Consumer Commission
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Canberra ACT 2601
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Dear Adjudication Branch staff,

Re The Application by the Infant Nutrition Council Limited applications for authorisation A91506 and A91507 concerning renewal/extension of MAIF Agreement for a period of 10 years

I refer to my submission to the ACCC of 11 November 2015 and summarise as follows:

1. Oppose extension of MAIF Agreement for 10 years.

I support the ABA submission to the ACCC dated 17 August.

2. **Toddler and post-toddler formula needs to be regulated along WHO Code lines.**

Such regulation impacts on infant and child breastfeeding practice. The tactics and strategies employed by formula companies, as outlined in the Best Start Report, ch. 8, impact negatively on women's and society's perceptions of breastfeeding and formula, and the duration of breastfeeding and the impeding of women to continue to breastfeed.

3. **Product placement in 'News' items, columnist blogs and etc need to be regulated.**

If it is the case that some formula companies plant 'news' stories about how troublesome breastfeeding is and how formula rescues the situation – then this needs regulating. Derision of breastfeeding, fear into mothers and others not to trust women's bodies and decisions – can be argued to be a violation of a human right to breastfeed (see George Kent).

4. **Fear Campaigns - 'shortage of formula', 'breastfeeding links to obesity' etc – need to be eradicated and regulated.**

5. **Online Mother and Baby Clubs** fail to state that they are run by formula companies who have a product to sell – a conflict of interest – need to be regulated. Eg <http://www.meandmychild.com.au/>. Pictures of S26 on homepage and 'Made with love' ad pops up across entire screen with cute little kangaroo image. See Best Start Report, ch.8.

6. **Adopt the WHO Code: I support the recommendation of the Best Start Report of 2007, chapter 8,** and for retailers, distributors, breastpump, teat, bottle, dummy etc manufacturers, suppliers and retailers.

concerning the legislative adoption of the WHO Code together with the examples of how the Parliament may have legislative competence to do so and the type of legislation needed at the Federal level. See also Sokol, E: *The Code Handbook: A Guide to Implementing the International Code of Marketing of Breast Milk Substitutes 2nd Edition*. Penang, Malaysia: International Baby Food Action Network, International Code Documentation Centre; 2005.

Further **Points of objection:**

1. Self-regulation of a voluntary code of manufacturers – the weakest link

is questionable and the weakest system of regulation that places control with those who benefit by way of profits with no onus to consider real accountability and the real best interests of babies, children and mothers;
2. No enforceable remedies for breach of the MAIF agreement,

retailers and distributors are not covered, toddler aged babies and formula are not covered, so promotion of toddler formula can influence societal perceptions and mother infant feeding choices that are supposed to be protected. Promoting toddler formula as necessary is highly questionable;
3. 10 years is a long time to have an agreement without review. 5 years is also too long.
4. WHO may be about to change infant feeding recommendations in the next year or so a 10 year agreement will not consider changes and new world leading information/guidelines.
5. Australia needs stronger, broader laws to capture all promoters and sellers of breastmilk substitutes including baby foods.
6. Enforcement Agency/ Authority:
 - There needs to be a regulator such as the ACCC to enforce breaches of a stronger code or enforceable laws, given the powers of the ACCC and the greater respect it has in regulating consumer markets.
 - Needed: enforceable undertakings, injunctions, compensation, public and private apologies and other remedies and mechanisms.
 - The Australian Consumer Law should be examined to see where protections for breastfeeding via control of marketing and other promotion can be included in the Law and regulated by the ACCC with the full force of all of its powers.
7. Not all breastmilk substitute companies are signatories to the MAIF Agreement. Any system needs to have all in and covered by the regulations, including promoters of other paraphernalia such as bottles, teats and expressing breast pumps which may be promoted as being equal to breastfeeding and normalising artificial aids.

8. COMPLAINTS:

The fact that in 2006/07 there were 982 complaints received by APMAIF about companies engaging in conduct that seemed to breach the MAIF Agreement but over 700 were excluded as being outside the scope of the MAIF agreement and that not one was upheld to be a breach, calls for questions about what those complaints were about. Were they based on the WHO Code? Is this the true benchmark that needs to be in place for the regulation of corporations who compete with breastfeeding and each other?

9. Independent Tribunal?

The current Tribunal has been queried as to its potential for bias, industry driven representation on the Tribunal, lack of independence – see Best Start Report, ch.8.

10. Branding, labelling tins

Regulation of cigarettes provides a good comparative strategy of ridding labels with persuasive wording that may be misleading and can have psychological impact. Breastfeeding has no such packaging.

11. Websites

Websites that say they are for toddlers but link back to formula from birth or under 12 months.

12. Formula encouraged in hospitals with free samples to mothers, continues.

13. Ads for eg Aptamil that constantly play next to my emails while I attempt to read my emails, despite clicking 'I do not want to see this'. These are ads that are small enough to show their name and colours and etc but big enough and movement to catch complete attention.

Examples of Ads in the 'News' and social media:

1. 'We need to get some perspective: when the pressure to breastfeed gets too much'. This apparent news item seems to be an example of promotion of formula ie there is **Aptamil Nutricia Profutura** store online purchase ad prominently displayed alongside the 'news' item at <http://www.news.com.au/lifestyle/parenting/we-need-to-get-some-perspective-when-the-pressure-to-breastfeed-becomes-too-much/story-fnet08xa-1227248968687>. When you click on the page to see more there is a picture of a heavily pregnant woman smiling and holding what looks like a planner/ipad – implying she is planning ahead to – not breastfeed – to formula feed. There are products below including vitamins and formula – no, not just toddler formula, it is 'from birth to 6 months' and 6 months to 1 year, and from 1-2 and from 2 onward: see

http://www.profuturastore.com.au/?utm_source=ATP&utm_medium=contextual&utm_content=300x250&utm_campaign=profutura-au-store-Q3-2015. This is similar to another 'news item' this year that actually had photo images of the formula cans in the article about 'Dad fights against pressure to feed' with the same father called "James" and not otherwise identified. I cannot obtain the link presently.

2. More blatant advertising, this time **Bellamy's Organic** complete with a promotional video by a mother sitting next to two tins of the product being placed and a scooper. This is marketing at its finest because it isn't really marketing – or is it? Obviously any Code or laws need to target product placement and advertising through 'news' stories:

<http://www.smh.com.au/national/health/bellamys-organic-white-gold-what-is-in-baby-formula-20151108-gku16x.html>

For whose purpose does a weak, unenforceable marketing of breastmilk substitutes 'agreement' benefit? Who has agreed to it? Certainly not the mothers and babies of Australia and their supporters – not a weak system of unaccountability. Breastfeeding rates set by the Government continue to go unachieved. With formula marketing, society is swimming upstream, against the odds.

Rachel McDonald