



ACCC PRE DECISION CONFERENCE

INFANT NUTRITION COUNCIL'S APPLICATION FOR RE-AUTHORISATION OF THE MAIF AGREEMENT

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Australian
National
University

Summary recommendations:

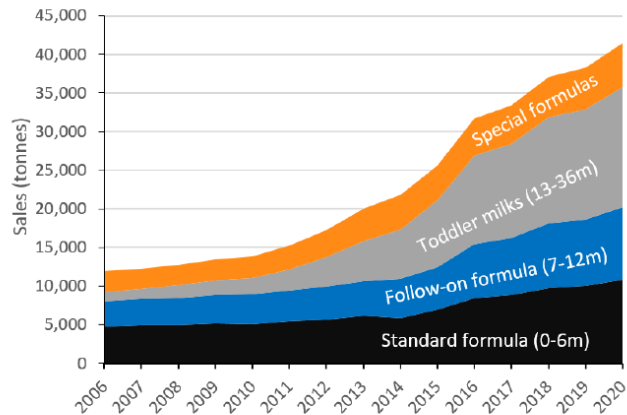
1. ACCC impose a condition on any authorisation which applies limitations on advertising set out in Clause 5(a) of the MAIF Agreement to all milk formula products for infants and young children aged 0-36 months. Any future authorisation of MAIF require robust evidence of public benefit on marketing, sales or breastfeeding, and absence of detriment.
2. Authorisation period no longer than 2 years. ACCC formally place this market under review for the period of reauthorisation
3. ACCC require INC to revise guidance documents for health professionals to achieve full compliance with the WHO International Code guidance for health workers, include these guidelines in MAIF authorisation, and encourage health professional organisations to add Code compliance into their ethical and professional codes of practice.
4. Account for the regulatory cost to civil society organisations and individuals of policing MAIF compared with effective legislation to implement the Code in Australia, and against net fiscal benefit of increased breastfeeding.
5. We urge that the ACCC's assessment of public benefit include marketing conduct of INC members in export markets, as required by Australian trade practices law and Australia's international human rights commitments.



1. THERE IS INSUFFICIENT EVIDENCE TO SUPPORT AN ACCC ASSESSMENT THAT THERE IS PUBLIC BENEFIT FROM MAIF, WHICH MAKES STRONG AND COMPREHENSIVE CONDITIONS ON ANY NEW AUTHORISATION ESSENTIAL

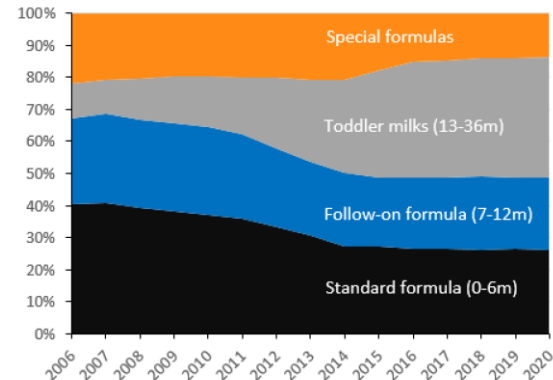
INC has submitted that since the ACCC's 2016 determination, industry has improved its practice. Available evidence is to the contrary. In recent years, the share of toddler formula in the Australian market has continued the rise that we reported in our submission in 2015.⁽¹⁶⁾ Sales continue to rise. It is our submission that there is no evidence of public benefit from approving the INC application for reauthorisation of INC as the MAIF is ineffective.

Figure 1. Trends in milk formula category retail sales (tonnes) in Australia, 2006-2020



Source: Euromonitor Passport

Figure 2. Changes in the proportionate share of milk formula category retail sales (tonnes) in Australia, 2006-2020



Source: Euromonitor Passport





2. THE DURATION OF ANY MAIF REAUTHORISATION SHOULD NOT EXCEED 2 YEARS

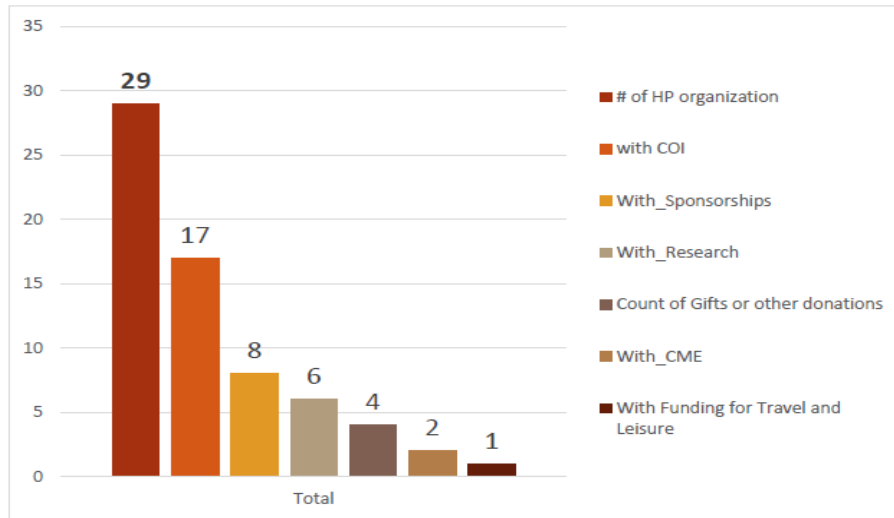
We submit that no significant changes to the effective operation of MAIF have been implemented as a result of previous reviews, and that the ACCC cannot rely on anticipation of the possible beneficial outcomes of a possible future review in its determination.

We submit that a shorter period of MAIF authorisation is more likely than a longer period to generate public benefit, as the review itself uncertain.



3. HEALTH PROFESSIONAL CODES OF CONDUCT ARE NOT A SUFFICIENT RESPONSE TO MARKETING TO HEALTH PROFESSIONALS

Figure 4: Australian health professional organisation ethical codes or standards on International Code



Source: see text

We submit to the contrary that there is relevant strong evidence of health care professionals being influenced by gifts or donations, sponsorships, continuing medical education, or other rewards, in the field of pharmaceuticals.

We challenge the ACCC assumption that these professional ethics and standards regulate health professional behaviour in any significant way regarding the WHO International Code.

4 WHO CURRENTLY BEARS THE COST OF REGULATING MILK FORMULA MARKETING, AND WHAT IS THE REAL COUNTERFACTUAL TO MAIF – IS IT REALLY MORE RAMPANT MARKETING?

It appears from the above that the ACCC views the main counterfactual as being regulatory costs on industry, government and regulatory agencies.

We submit that this should not be a decisive consideration in the ACCC determination.

- Evidence on various costs of implementing public health regulation
- Benefits to industry of MAF
- Outsourcing of monitoring costs of regulation



5. AUSTRALIAN EXPORT MARKETING ACTIVITIES SHOULD BE COVERED
COMMENSURATE WITH AUSTRALIA'S HUMAN RIGHTS OBLIGATIONS AND
TO PROTECT PUBLIC HEALTH FROM COMPANY STRATEGIES IN WTO
PROCESSES

ACCC power to regulate companies may extend widely and to companies' overseas conduct

Obligations of Australian Government agencies under international human rights treaties.

This suggest that the ACCC has the obligation as an agency of the Australian government to extend its consideration to the effects of marketing by Australian companies in export markets. It also suggests that the ACCC also has the legal duty to do so.



CONCLUSION

It is our submission that the ACCC must not grant this authorisation unless it ensures that the net public benefit is both certain and substantial. It is beyond power to grant the authorisation when the ACCC assessment is that the net benefit is both uncertain and finely balanced.

If the ACCC does grant this authorisation it must take steps to increase the certainty and the level of public benefit by imposing strong conditions and ensuring outcomes are closely monitored over a short period of time, with ample room to move if an Australian government decides to implement the decisions of parliament over many decades.



DETAILED RECOMMENDATIONS

1. That the ACCC impose a condition on any authorisation which extends the limitations on advertising set out in Clause 5(a) of the MAIF Agreement to apply to all breastmilk substitutes, including toddler milks. Clause 5(a) Manufacturers and importers of infant formulas should not advertise or in any other way promote formulas to the general public. (WHO Code Article 5.1) We further recommend that for any future authorisation of MAIF, the ACCC require INC to provide robust evidence on the extent to which MAIF has prevented or reduced promotion or sales of breast milk substitutes, or had positive effects on breastfeeding practices, as well as public detriment.
2. That the reauthorisation period should be for 2 years. As in our 2015 submission we further recommend that the ACCC publicly indicate its intention to place this market under formal market review during 2021-22.
3. That the ACCC require as a condition of authorisation that INC revise its guidance documents covering interactions in health channels and with health professionals to achieve full compliance with the WHO International Code guidance for health workers within 2 years. These guidelines should be a formal element of MAIF. We further urge that the ACCC encourage all health professional organisations seeking ACCC authorisations to similarly add all aspects and full Code compliance into their ethical and professional codes of practice.
4. That the ACCC account for and gather evidence of the regulatory cost to civil society organisations and individuals, and compare these with the regulatory costs and net fiscal benefit of effective legislation to implement the Code and thereby increase breastfeeding in Australia.
5. That the ACCC's assessment of public benefit include marketing conduct of INC members in export markets, as required by Australia's trade practices law and human rights commitments.



THANK YOU

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