

David Hatfield
Director, Competition Exemptions Branch
Australian Competition & Consumer Commission
exemptions@acc.gov.au

22 March 2021

Dear Mr Hatfield,

Re: Infant Nutrition Council - application for re-authorisation AA1000534—draft determination

Submission on behalf of the Australian Breastfeeding Association

The Australian Breastfeeding Association (ABA) is compelled to respond to the ACCC MAIF draft determination to once again provide a voice for babies, young children, and their families in Australia.

ABA is concerned that the commercial interests of formula manufacturers and importers is being elevated above the health and wellbeing of Australian babies, young children, and their families.

The World Health Organization has recognised for decades that the marketing of breastmilk substitutes needed to be regulated because it undermines breastfeeding. The WHO Code was adopted in the World Health Assembly (WHA) in 1981 and Australia was one of the first of 191 member countries of the WHA to endorse the Code.

The MAIF Agreement is an outdated, voluntary, self-regulatory agreement between infant formula manufacturers and importers who are signatories to the Agreement. It is a weak response to Australia's commitment to the WHO Code and a response that, in 2021, allows the unrestrained advertising of toddler milk, that cross-promotes infant formulas, and goes against the intent of the MAIF Agreement.

We must always remember that formula manufacturers and importers profit, and only profit, when breastfeeding fails.

A 2021 review of the promotional materials and activities of manufacturers of breastmilk substitutes showed they were capitalising on fears about COVID-19, in countries outside Australia, by using health claims and misinformation about breastfeeding to mislead vulnerable breastfeeding mothers into thinking that using breastmilk substitutes was a safer alternative to breastfeeding (Ching et al., 2021). The manufacturers involved included signatories to the MAIF Agreement. Formula companies demonstrate, yet again, that anything that relates to breastfeeding is an opportunity to sow doubt with mothers and families, and undermine breastfeeding, in order to market their products and profit from the fear and uncertainty they create.

In this submission ABA makes recommendations, provides the rationale for the recommendations, and additionally provides evidence that toddler milks are unnecessary, but more than that, they are detrimental to the health and wellbeing of babies, young children, and their families in Australia.

ABA recommends that:

1. A condition be imposed 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)

2. The reauthorisation period should be two years, not five years.

We provide the rationales for our recommendations in Appendix 1 and evidence that toddler milks are unnecessary, expensive, sugar-laden products that displace breastmilk in Appendix 2.

We are happy for our submission to be made public on the public register on the ACCC's website.

Please contact me if you would like further information about the Australian Breastfeeding Association or this submission.

Yours sincerely,



Margaret Grove

President

Australian Breastfeeding Association

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Appendix 1 Rationales for ABA recommendations

Recommendation 1: Impose a condition to limit advertising of all breastmilk substitutes including toddler milks

The ACCC, in their draft determination, has made an excellent summary of the reasons why toddler milk advertising is acting as a proxy for infant formula advertising. In doing so, it makes the case that the public detriment is considerable and may outweigh the public benefit of the MAIF Agreement.

In paragraphs 4.24 to 4.28, the ACCC provides evidence, including from the World Health Organization, that:

- toddler milks are breastmilk substitutes,
- manufacturers of infant formula commonly use marketing of toddler milk products to cross-promote infant formula products, and
- parents frequently misunderstand toddler milk marketing to be advertising for infant formula.

The ACCC itself has come closer than ever before in acknowledging that a condition is required to limit toddler milk advertising:

4.86. The ACCC therefore considers that the assessment of the public benefit and detriment is finely balanced. This is because there is a substantial risk that much of the claimed public benefit will not be realised as a result of the marketing of toddler milk by infant formula companies effectively promoting infant formula.

The ACCC indicates what change could be made in the MAIF Agreement to impose such a condition:

4.87. In order to address this risk the ACCC is considering whether to impose a condition which extends the limitations on advertising set out in Clause 5(a) of the MAIF Agreement to apply to all breast milk substitutes, including toddler milk.

ABA argues that, if the public benefit and detriment is so finely balanced and the ACCC considers there is a substantial risk that toddler milk marketing does promote infant formula, then the ACCC must act in the best interest of Australian babies, children and families rather than formula manufacturers and importers.

ABA sees the confusion among mothers and families through the National Breastfeeding Helpline and face-to-face services; we hear the upset and anger among our members; and we confront the impact on infants and toddlers and breastfeeding rates.

ABA strongly recommends that a condition is imposed to limit advertising of all breastmilk substitutes, including toddler milks, to ensure that the public benefit of the MAIF Agreement outweighs the public detriment.

Recommendation 2. Reauthorisation for two years

As ABA stated in its original submission, there should be a two-year extension to the MAIF Agreement, not a five-year extension as proposed in the draft determination.

ABA accepts that there needs to be an instrument to regulate advertising of formula for infants 12 months and younger. As the ACCC recognises in paragraph 4.12 of the draft determination, no MAIF Agreement (or the future without the Conduct), would likely result in signatories to the MAIF Agreement promoting 'the sale of infant formula alongside the promotion of toddler milk and other breast milk substitutes' until a replacement regulatory instrument was in place.

The ACCC appears to have taken into account Department of Health advice that the independent review of the effectiveness of the MAIF Agreement should be taken into consideration when recommending reauthorisation for five years:

4.92. The Department of Health is of the view that a five year authorisation would be more appropriate than the requested 10 year period, as this would support ongoing collection of information (including the planned review of the effectiveness of the MAIF Agreement), and recognise the rapidly evolving marketing environment, to reduce the risk of a negative impact of these arrangements

ABA accepts it will take time for an independent review of the MAIF Agreement and to develop and adopt an appropriate replacement regulatory instrument. However, two years is sufficient time to undertake an independent review and have review recommendations implemented.

Additionally, reauthorisation for five years will advantage formula manufactures and importers allowing them to 1) maximise sales in a lucrative market and 2) establish new products that sit outside the limitations of the MAIF Agreement.

Australian babies, children and their families have already waited too long for the Australian Government to put their health and wellbeing above that of formula manufacturer profits.

ABA recommends reauthorisation of the MAIF Agreement for two years.

Appendix 2. Toddler milks are unnecessary, expensive, sugar-laden products that displace breastmilk.

The WHO developed guidance on *Ending the Inappropriate Promotion of Foods for Infants and Young Children* concerned that toddler milks were acting as breastmilk substitutes and undermining optimal complementary feeding practices for children up to 36 months (WHO, 2016).

It encourages Member States to develop stronger national policies that protect children under the age of 36 months from marketing practices that could be detrimental to their health.

It recommends that products that function as breastmilk substitutes should not be promoted. A breastmilk substitute should be understood to include any milks that are specifically marketed for feeding infants and young children up to the age of 36 months.

Toddler milks are unnecessary

The current Australian *Infant Feeding Guidelines* (National Health and Medical Research Council (NHMRC), 2012) state that:

- Toddler milks and special and/or supplementary foods for toddlers are not required for healthy children.
- From 12 months of age and beyond, toddlers should be consuming family foods consistent with the Australian Dietary Guidelines.

In 2018, the European Society for Paediatric Gastroenterology Hepatology and Nutrition (ESPGHAN) critically reviewed the evidence on the role of toddler milks for young child nutrition. It found that there is 'no necessity for the routine use' of toddler milks to increase nutrient intakes and, importantly, that other strategies could be used including 'promotion of a healthy varied diet, use of fortified foods, and use of supplements.' (Hojsak et al., 2018)

Toddler milks are unnecessary and toddlers should be consuming a healthy, varied diet based on family foods.

Toddler milks are expensive and sugar-laden

Toddler milks are expensive. In Australia, toddler milks cost up to four times more than regular fresh milk and if regularly used could cost families as much as \$23.56 more per month than regular milk (VicHealth. 2020).

Toddler milks are high in sugar. An Australian study found that toddler milks in Australia had sugar contents the same as soft drinks (McCann et al., 2020). Some toddler milks contained up to 8g more sugar per 200mL serve than an equivalent fresh milk product. If used daily, a child would consume around 240g more sugar – or 60 teaspoons – over a month compared to fresh milk (VicHealth, 2020).

Toddler milks displace breastmilk

The WHO recommends that breastfeeding continue into the second year of life to achieve optimal growth, development and health (WHO, 2003). Often the WHO recommendation for breastfeeding to continue into the second year of life is dismissed as not being relevant to high-income, developed countries like Australia.

Breastmilk provides significant macronutrients, micronutrients and energy (calories) when young children are breastfed into the second year of life (Czosnykowska-Łukacka et al., 2018; Perrin et al., 2017).

Breastfeeding into the second year is important and the use of toddler milk drinks from 12 months is unnecessary and is likely to be detrimental to the continuation of breastfeeding and the health and wellbeing of young Australian children. Toddler milks displace breastmilk.

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