



Australian Competition & Consumer Commission

GPO Box 3131

CANBERRA ACT 2601

By email: exemptions@acc.gov.au

Our Ref: RLIMA.1563.2104.dh

6 April 2021

Dear Sir/Madam,

RE: AA1000534 – Infant Nutrition Council – Submission

Danone is one of the world's leading manufacturers of infant formula and toddler milk drinks, with brands marketed in Australia including Aptamil and Karicare. Danone also manufactures a large range of specialised nutrition products to support infants, toddlers, children and adults with specific diagnosed conditions such as phenylketonuria, severe cow's milk protein allergy and mild cognitive impairment (early onset Alzheimer's disease).

Danone has a very clear, detailed global policy for the marketing of breast-milk substitutes [published on our company website](#). As one of few companies with such an encompassing global policy, it includes the following commitments (amongst others):

- We support the World Health Organisation's (**WHO's**) global public health recommendation calling for exclusive breastfeeding for the first six months of life, followed by the introduction of safe and appropriate complementary foods thereafter;
- We encourage continued breast-feeding for up to two years and beyond, alongside the introduction of safe and appropriate complementary foods after six months of age;
- We acknowledge the importance, and commit to the principles of, the WHO Code and subsequent relevant WHA resolutions; and
- We are committed to ensuring that the practice of breast-feeding is not undermined through marketing material on any of our products.

Danone has a long history of working collaboratively and constructively with governments, regulators, civil society organisations and other not-for-profit groups to develop policies and practices that uphold the WHO's public health goals.

In relation to the ACCC's draft determination for the reauthorisation of the MAIF agreement, Danone wishes to express serious concerns on the impact of the proposed condition that will effectively extend the restrictions on infant formula



advertising to also incorporate toddler milk products (**Proposed Condition**). Where a term used in this response is not defined, the definitions in (i) the Infant Nutrition Council's (INC's) application for re-authorisation of the MAIF Agreement and associated guidelines; and (ii) the INC's response to third party submissions dated 18 January 2021, are to be adopted.

Danone's concerns are captured in detail within the response provided to the ACCC by the INC. To reiterate however, our key concerns include:

1. The Proposed Condition is beyond the scope of the ACCC's power to impose a condition under section 88(3) of the *Competition and Consumer Act 2010 (Cth)* (CCA). Danone considers that imposing the Proposed Condition would in effect amount to the ACCC seeking to implement legislative reform and re-draft the MAIF Agreement to create what the ACCC considers to be an 'ideal' industry code. Further, those changes would take effect without the usual regulatory assessment and consultation processes that ordinarily accompany the consideration of such reforms.
2. The regulation of Toddler Milk marketing is a matter of public health policy, which should be addressed by the Federal Government rather than be implemented through the ACCC authorisation process. Any extension of the scope of the MAIF Agreement should be considered by appropriate public health departments, including through the upcoming Federal Government review of the MAIF Agreement.
3. As the ACCC acknowledges in the Draft Determination, the restrictions in the MAIF Agreement are likely to promote and protect breastfeeding, and result in significant public benefits compared to the counterfactual. Danone considers that the Proposed Condition may erode those public benefits, as it could:
 - a. negatively impact commitment from existing signatories to the MAIF agreement to remain signatories going forward; and/or
 - b. deter new signatories from signing up to the MAIF Agreement.
4. The Proposed Condition would likely deter any new market entrants and therefore negatively impact competition and consumer choice. Restrictions on Toddler Milk advertising would also likely deter market participants from pursuing science-based innovation to improve the nutritional composition of Toddler Milk products, which would also lead to the erosion of Australia's competitive position in important export markets.
5. The ACCC's consideration of whether the Proposed Condition may be appropriate in this case appears to be predicated on a number of matters (put forward by interested third parties) that, in Danone's view, do not have a proper factual basis. In particular, Danone's position is that:
 - a. Based on the relevant Federal Government policies and publications as well as accepted international standards, Toddler Milk should not be regarded as a breast milk substitute.
 - b. There is no evidence that marketing of Toddler Milk has resulted in reduced breastfeeding rates in Australia.
 - c. The MAIF Complaints Committee is effective in addressing issues arising out of infrequent instances of cross-promotion of Infant Formula through Toddler Milk marketing.

Danone remains strongly committed to upholding its pledge to market breast-milk substitutes responsibly and support the WHO's public health recommendations and goals.



As a long-standing signatory to the MAIF Agreement, we are also committed to working collaboratively with the Federal Government and with civil society organisations to review the effectiveness of the Agreement through the structured, formalised process directed by the Department of Health, that we understand will commence in the second half of this year. This process is by far the most appropriate for material changes to the MAIF Agreement to be proposed and considered, taking into account all available evidence and stakeholders' perspectives.

Yours faithfully,


Rodrigo Lima
Managing Director
Danone Nutricia
Specialised Nutrition ANZ