



**Australian Government**

**Department of Health**

Deputy Secretary

Mr David Hatfield  
Director, Competition Exemptions Branch  
Australian Competition and Consumer Commission  
[adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Mr Hatfield

Thank you for your correspondence of 30 October 2020 regarding the application for revocation of authorisations A91506 and A91507 and substitution of new authorisation AA1000534, lodged by the Infant Nutrition Council (INC).

I note the application lodged by the INC. Based on the demonstrated history of the authorisation, the Department of Health (the department) is supportive of the application for the renewal of the authorisation of the MAIF Agreement. Authorisation of the MAIF Agreement is necessary to continue to result in public benefits in the form of promotion and protecting breastfeeding through the restriction of inappropriate advertising of infant formula.

The department notes that INC is seeking a ten-year authorisation, however in line with existing arrangements the department would be supportive of a five-year authorisation. A five-year timeframe would support ongoing collection of information, to reduce the risk of a negative impact of these arrangements on competition and breastfeeding rates in Australia.

Further detail on the department's role in the MAIF Agreement, and views on reauthorisation, is provided in our enclosed submission. I acknowledge this letter and the department's submission forms part of the authorisation process and will be published on the ACCC public register.

Yours sincerely

Tania Rishniw  
Primary and Community Care Group

3 December 2020

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**Australian Government**  

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**Department of Health**

**Re-authorisation of the Marketing in Australia of Infant  
Formulas: Manufacturers and Importers Agreement  
(MAIF Agreement) by the Australian Competition and  
Consumer Commission (ACCC)**

**Submission to the ACCC – interested party consultation  
December 2020**

**DEPARTMENT OF HEALTH**

**December 2020**

The Department of Health acknowledges the submission for authorisation of the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement) by the Infant Nutrition Council (INC). We support the application for the reasons outlined below. However, the Department is of the view that a five year reauthorisation period would be preferable to ten years. We have also noted specific comments in relation to toddler milk marketing, and the associated guidelines.

### Overview

The Department of Health manages the MAIF Agreement, which is Australia's response to the World Health Organization's International Code of Marketing of Breast-milk Substitutes (the WHO Code). The Australian Government monitors compliance with the MAIF Agreement through the MAIF Complaints Committee whose members are appointed by the Department of Health. Individuals, members of industry, community and consumer groups are able to lodge complaints with the Department where they believe a breach of the MAIF Agreement has occurred.

The MAIF Agreement aims to contribute to the provision of safe and adequate nutrition for infants, by protecting and promoting breastfeeding and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information through appropriate marketing and distribution.

Details of the complaints received are published in the MAIF Annual Reports and on the Department's website. The number of complaints received per year varies. In the past five years (up to the 2019-20 financial year), an average of 17 complaints per year were received. On average over that same period around 60% (54 out of 85) were considered to be out of scope, and of those that were in scope around one third (10 out of 31) were considered breaches. Examples of out of scope complaints includes: the marketing activities of retailers including pharmacies and supermarkets; toddler milk products for toddlers over 12 months of age, and baby food, feeding bottles, teats and dummies; and companies who are not signatories to the MAIF Agreement.

The Department agrees with INC that the MAIF Agreement will continue to result in public benefits, including:

- promoting and protecting breastfeeding while also ensuring that appropriate information is provided to those who are unable to (or make an informed choice not to) breastfeed;
- the MAIF Agreement is an effective voluntary industry code with associated benefits including enhanced transparency and low compliance costs; and
- the development of the MAIF Complaints Committee has made for a more transparent mechanism for resolving complaints alleging breaches of the MAIF Agreement.

The Australian National Breastfeeding Strategy: 2019 and Beyond (the Strategy), endorsed by all Australian governments in 2019, provides an enduring policy framework for all Australian governments to provide a supportive and enabling environment for breastfeeding.

Action area 1.2 of the Strategy recommends the Commonwealth “Commission an independent review to determine: the effectiveness of the MAIF Agreement in restricting inappropriate marketing of breastmilk substitutes”. The Department is currently developing an implementation plan and governance arrangements for the Strategy, and anticipates undertaking a comprehensive review of the MAIF Agreement in 2021.

### 10 year authorisation

The Department is of the view that a five-year authorisation, in line with existing arrangements, would be more appropriate than the proposed ten years. A five-year timeframe would support ongoing collection of information (including the review of the MAIF Agreement in 2021, as noted above), and recognise the rapidly evolving marketing environment, to reduce the risk of a negative impact of these arrangements on competition and breastfeeding rates in Australia.

### Toddler milk marketing

The Department notes the INC application for authorisation, under Section 6.4(a), states the issue of toddler milk has been addressed through development of INC guidelines; current Committee guidelines under development (staging and age range information); and complaints that have been considered by the MAIF Complaints Committee recently. We acknowledge that significant progress has recently been made on this issue.

The Department is aware that policy on toddler milk marketing is the role of government and cannot be addressed through the ACCC authorisation process.

There are significant ongoing discussions regarding toddler and ‘growing up’ milks, both in Australia and internationally. The Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) are reviewing the standards for infant formula for older infants and for older children, including discussions around cross-promotion. The Department notes that there is considerable concern amongst some stakeholders that toddler milk is used as a proxy tool to market infant formula (see for example, Berry et al 2012<sup>1</sup>).

The Department recognises INC’s concerns that if the MAIF Agreement was to be extended to toddler milk, there is a risk MAIF Agreement signatories may opt out. Noting this is an area of continuing discussion and noting that the department is currently developing the implementation plan for the Breastfeeding strategy, we consider the issue of toddler milks requires further consideration and should be explored in detail as part of the planned review of the MAIF Agreement in 2021.

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<sup>1</sup> Berry et al 2012, *Toddler milk advertising in Australia: Infant formula advertising in disguise?* Australasian Marketing Journal 20 (2012) 24–27, <https://ro.uow.edu.au/hbspapers/1177/>

### Associated Guidelines

The Department notes that the conduct for which authorisation is sought includes the MAIF Agreement and associated guidance documents developed by the MAIF Complaints Committee and its predecessor, the Advisory Panel of the Marketing in Australia of Infant Formula (APMAIF), and INC.

The Department supports the inclusions of additional guidance, interpretations and INC policy documents in the authorisation along with the MAIF Agreement; as long as it is clearly identified, which body has endorsed the guidelines (Infant Nutrition Council, APMAIF or the MAIF Complaints Committee).

Prior to 2013, APMAIF was the non-statutory panel which monitored compliance with the MAIF Agreement. The APMAIF was disbanded and ceased to operate from 8 November 2013. The MAIF Complaints Committee (established 2018) resolved to review the APMAIF guidance documents and is part way through doing so. When this review is finalised it is expected that the APMAIF guidelines will cease to be relevant.