



22 March 2021

Mr David Hatfield  
Director, Competition Exemptions  
Australian Competition & Consumer Commission

By email to: [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)

Dear Mr Hatfield

***Submission on draft determination: Infant Nutrition Council application for reauthorisation of the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement***

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Victoria, VicHealth and the Global Obesity Centre at Deakin University; a World Health Organization Collaborating Centre for Obesity Prevention. The Obesity Policy Coalition advocates for evidence-informed policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children. We welcome the opportunity to provide a response to the ACCC's draft determination on reauthorisation of the *Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement* (MAIF agreement).

The OPC supports comprehensive, effective measures that promote breastfeeding in Australia, with evidence showing that breastfeeding is a protective factor against childhood obesity.<sup>1</sup> We do not support the MAIF agreement as a voluntary, industry code with limited application and effect. We support mandatory government regulation to restrict all marketing of breast milk substitutes, to best protect and promote breastfeeding and give effect to the World Health Organization's *International Code of Marketing of Breast Milk Substitutes*, and relevant World Health Assembly resolutions.

We do, however, acknowledge the limitations of the ACCC's role, and understand that it is beyond the scope of this consultation for the ACCC to assess and recommend the best practice mandatory regulation that many public health organisations support. We understand that the question for the ACCC is whether the MAIF agreement confers a public benefit that is sufficient to outweigh any public detriment, and that in doing so it can consider factors that affect the likely public health benefit of the agreement, including marketing of toddler milks and marketing by non-signatories.

In this context, we support the ACCC imposing a condition of reauthorisation to require the MAIF agreement to restrict the marketing of toddler milks.

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<sup>1</sup> Rito A, I, Buoncristiano M, Spinelli A, Salanave B, Kunešová M, Hejgaard T, García Solano M, Fijałkowska A, Sturua L, Hyska J, Kelleher C, Duleva V, Musić Milanović S, Farrugia Sant'Angelo V, Abdrakhmanova S, Kujundzic E, Peterkova V, Gualtieri A, Pudule I, Petrauskienė A, Tanrygulyyeva M, Sherali R, Huidumac-Petrescu C, Williams J, Ahrens W, Breda J: Association between Characteristics at Birth, Breastfeeding and Obesity in 22 Countries: The WHO European Childhood Obesity Surveillance Initiative – COSI 2015/2017. *Obes Facts* 2019;12:226-243. doi: 10.1159/000500425.

We strongly agree with the WHO position as outlined by the ACCC in its draft determination, that the promotion of toddler milk has the simultaneous effect of promoting infant formula, and undermining breastfeeding, and should not be permitted. We support the ACCC's conclusion that the promotion of toddler milk by infant formula companies '*...has the potential to undermine the effectiveness of the MAIF Agreement, and creates a risk that much of the claimed public benefit may not be realised.*'

We support the ACCC's proposal to extend the limitations on advertising set out in Clause 5(a) of the MAIF agreement to all breast milk substitutes, including toddler milk. We also consider that the forms of advertising that are restricted should extend to all forms of marketing, including brand marketing, although note that the ACCC is not proposing to include this in its determination.

In response to the ACCC's question about what form the condition should take, we consider that it should apply to all milks (or products that could be used to replace milks) in liquid or powder form that are specifically marketed for feeding infants and young children up to 36 months of age. This framing comes from the World Health Organisation's *Guidance on ending the inappropriate promotions of foods for infants and young children* and will ensure that all infant formula and toddler milks are captured.

We thank you for your consideration of these important issues. Please contact me at [REDACTED] if you would like to discuss any of the issues further.

Kind regards,

[REDACTED]

Jane Martin  
Executive Manager  
Obesity Policy Coalition