

16 November 2020

Email: exemptions@accc.gov.au

Attention

David Hatfield
Director
Competition Exemptions Branch
ACCC

Dear Mr Hatfield

AA1000534 – Infant Nutrition Council – submission

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry. The membership of AFGC comprises more than 180 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors in Australia.

The AFGC appreciates the opportunity to provide comments on the application for re-authorisation from the Infant Nutrition Council (INC) in relation to the *Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement* (MAIF Agreement) and associated guidelines.

The application has been reviewed and the comments below relate to this specific document (**AA1000534**).

General comments

The AFGC strongly supports the INC's application for re-authorisation of the MAIF Agreement and associated guidelines as it is an effective voluntary industry code with associated public benefits including enhanced transparency and low compliance costs. These benefits have been acknowledged by the ACCC and the New Zealand Commerce Commission.

The marketing and distribution of infant formula is effectively managed by the MAIF Agreement, which seeks to implement the elements of the WHO Code that relate to manufacturers and importers of Infant Formula, coupled with the Australian Consumer Law prohibitions on (i) misleading and deceptive conduct; and (ii) false and misleading claims.

The MAIF Agreement has restrictions that are directed to meeting the important public health goals of protecting and promoting breastfeeding and are effective in the provision of safe and adequate nutrition for infants by ensuring that information is disseminated by appropriately trained health care professionals.

The AFGC also strongly supports the re-authorisation period of a 10-year term as an appropriate length of time.

Specific Comments

Re-authorisation

The AFGC strongly supports the re-authorisation of the MAIF Agreement by the INC as a voluntary self-regulatory code of conduct between the manufacturers and importers to Australia of Infant Formula.

The benefits of this MAIF Agreement include (but not limited to):

- promotes and protects breastfeeding as well as the provision of suitable and consistent information to those parents and carers who are unable to (or choose not to) breast feed;
- effectively manages a voluntary industry code coupled with benefits such as enhanced transparency and low compliance costs. The signatories to the MAIF Agreement include all of Australia's major manufacturers and importers of Infant Formula. The internal monitoring and compliance practices by signatories ensure conduct conforms to the principles and aims of the MAIF Agreement;
- a strong and transparent mechanism for complaint resolution of possible breaches of the MAIF Agreement by the establishment of a MAIF Complaints Committee;
- the development of guidelines on the application of the MAIF Agreement, including the 'Guidelines on staging information for the labelling of infant formula'.

10-year term

The AFGC strongly supports a 10- year term for re-authorisation as appropriate, for the following reasons:

- few changes were made to the MAIF Agreement in the eight years following the 2007 Determination, and there have been no changes to the MAIF Agreement since the 2016 Determination;
- the Federal Government has not currently indicated an intention to request changes to the MAIF Agreement or change its policies in relation to the marketing and promotion of Infant Formula;
- if relevant policy changes were to be put forward by the Federal Government, it would take significant time for such changes to be agreed and implemented;
- any major change in the policy environment, during the period of authorisation, provides a basis for the ACCC to review the authorisation;
- the costs undertaking a reauthorisation process by parties, such as INC, every five years are significant.
- where there is no evidence currently that the Federal Government's policies will change in the near-term, it is appropriate that a longer term be granted.

In summary, the AFGC strongly supports the application by the INC of the re-authorisation of the voluntary MAIF Agreement and associated guidelines for the period of a 10-year term for public benefits including enhanced transparency and low compliance costs.

Yours sincerely



Geoffrey Annison, PhD.
Deputy CEO