

22 March 2021

Mr David Hatfield  
Competition Exemptions Branch  
Australian Competition and Consumer Commission  
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Dear Mr Hatfield

**VicHealth's response to the ACCC's draft determination to re-authorise the *Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement)***

The Victorian Health Promotion Foundation (VicHealth) welcomes the opportunity to comment on the ACCC's draft determination on the Infant Nutrition Council's application to re-authorise the MAIF Agreement, and the potential additional conditions being considered by the ACCC.

VicHealth strongly recommends that the ACCC only grants the proposed five-year reauthorisation of the MAIF Agreement if the following conditions are included:

1. That the MAIF Agreement applies to all 'breastmilk substitutes' to align with the World Health Organization's International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly Resolutions. This includes any milks in either liquid or powdered form that are marketed for infants and toddlers aged 0–36 months.
2. That the MAIF Agreement prohibits the cross-promotional efforts that are used by infant formula and toddler milk companies that may confuse parents and caregivers, and potentially lead them to use infant formula instead of breastfeeding.

We have expanded on this recommendation in the attached submission.

We have a number of other serious concerns regarding the health impacts of the MAIF Agreement, which we outline in Appendix 1. We note that the ACCC has indicated in its draft determination that these are outside of the scope of this assessment process. However, we look forward to the Department of Health's upcoming review of the MAIF Agreement, and trust that the review will resolve these issues and result in a government-led regulatory approach to breastmilk substitutes that supports the health of infants and toddlers.

We would welcome the opportunity to discuss this submission further. Please contact Cassie Nicholls, Senior Policy Advisor, on [cnicholls@vichealth.vic.gov.au](mailto:cnicholls@vichealth.vic.gov.au) or 03 9667 1317 if you wish to do so.

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Sir James Gobbo  
Professor Emeritus  
Sir Gustav Nossal AC CBE

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

Yours sincerely



**Dr Sando Demaio**  
**Chief Executive Officer**

## VicHealth's response to the ACCC's draft determination to re-authorise the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (MAIF Agreement)

### About the Victorian Health Promotion Foundation (VicHealth)

VicHealth was established as a statutory body of the Victorian Government in 1987 and we have over 30 years' experience in promoting health. We know there are barriers to good health and wellbeing for people in our community, and we work with partners to discover, implement and share solutions to these challenges. We understand how changes in the environment can promote health and draw on practices that ensure we achieve the best outcomes for those who need it most.

A core part of our work is ensuring all Victorians can eat a healthy, balanced diet, which includes a focus on supporting policy reform. This is particularly important for infants, toddlers and children, as an optimal diet in the early years can set them up for life-long good health.

For more information, see [www.vichealth.vic.gov.au](http://www.vichealth.vic.gov.au)

VicHealth strongly recommends that the ACCC only grants the proposed five-year reauthorisation of the MAIF Agreement if the following conditions are met:

- 1. That the MAIF Agreement applies to all 'breastmilk substitutes' to align with the World Health Organization's International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly Resolutions. This includes any milks in either liquid or powdered form that are marketed for infants and young children aged 0–36 months.**

VicHealth strongly supports broadening the scope of the MAIF Agreement to capture all breastmilk substitutes, as there are clear health benefits of continued breastfeeding up to two years for both the mother and the baby.

Breastfeeding is important to the health, nutrition and wellbeing of infants and children,<sup>1 2</sup> and the health and wellbeing of mothers.<sup>3 4 5</sup> It is estimated that in 2017-18, only 29% of infants were exclusively breastfed at 6 months of age.<sup>6</sup> Data from the 2010 Australian National Infant Feeding Survey indicated that mothers from low socioeconomic backgrounds were less likely to exclusively breastfeed their baby compared to mothers from high socioeconomic backgrounds.<sup>7</sup> Furthermore, only 7% of Aboriginal and Torres Strait Islander babies were exclusively breastfed up to six months of age, compared to 16% of non-Indigenous babies.<sup>8</sup>

Milks and formulas marketed for infants over 12 months, including follow-on formula and toddler milks, are often used as a replacement for breastmilk and therefore act as a breastmilk substitute.<sup>9</sup> The aggressive marketing of breastmilk substitutes has a direct impact on breastfeeding initiation, duration and exclusivity.<sup>10 11 12</sup> A 2019 audit of toddler milks found that there are 32 toddler milk products available in Australia.<sup>13</sup> These products are able to be marketed freely as they are not within the scope of the MAIF Agreement.

To support optimal health for mothers and babies, the World Health Organization (WHO) states that these products must be considered under the WHO International Code of Marketing of Breast-milk Substitutes (the Code).<sup>14</sup> Under the Code, the definition of breastmilk substitutes includes any milks

in either liquid or powdered form that are marketed for infants and toddlers up to the age of three years (i.e. 0–36 months). This includes infant, follow-on and toddler formulas.<sup>15 16</sup>

Currently, the MAIF Agreement only applies to formula products marketed for infants up to 12 months. If the MAIF Agreement is Australia’s response to the Code, and it is truly aiming to benefit the health of infants and toddlers, it is imperative that it applies to all breastmilk substitutes, including those marketed as being for toddlers up to 36 months.

**1. That the MAIF Agreement prohibits the cross-promotional efforts that are used by infant formula and toddler milk companies that may confuse parents and caregivers, and potentially lead them to use infant formula instead of breastfeeding.**

The cross-promotion of infant formula and toddler milks is a significant concern. In recent years, manufacturers of infant formula have diversified and extended their product portfolios to include ‘follow-on formulas’ and ‘toddler milks’.<sup>17 18</sup> While the MAIF Agreement limits marketing of infant formula, manufacturers can create brand recognition through the marketing of products that are not covered by the MAIF Agreement, and by extension, increase the likelihood that parents and caregivers will purchase their infant formulas. These strategies used by companies creates consumer confusion which ultimately undermines efforts to promote breastfeeding.<sup>19</sup> This clearly goes against the evidence regarding the health benefits of breastfeeding and the intent of the MAIF Agreement.

Broadening the scope of the MAIF Agreement to apply to all breastmilk substitutes will prevent companies from aggressively marketing toddler milks and cross-promoting infant formula, which will lead to less consumer confusion.

An example of the negative health impacts of these marketing tactics is the way that toddler milks are being marketed as being necessary for healthy growth and development during the early years, despite not being necessary to include in a healthy toddler diet.<sup>20</sup> In addition, the co-location, co-branding and numbering system applied to infant formula and toddler milk products in supermarkets and retail environments is a marketing strategy that implies a ‘natural progression’ from infant formula to follow-on milks and then to toddler milks. This numbering system and cross promotion is likely to mislead parents and caregivers into believing that once a child reaches age 1, age 2, and age 3, they must move onto the ‘next’ formula (see Figure 1).



Figure 1: Example of infant and toddler milk products using a numbering system.<sup>21</sup>

Toddler milks use similar branding, packaging, and on-label claims as the infant formulas that are produced by the same manufacturers. The potential for confusion among parents and caregivers has been highlighted in various studies,<sup>22 23 24</sup> and recent research supports this. For example:

- An Australian qualitative study found that 75% of participants described toddler milks as ‘formula’, ‘infant formula’ or ‘baby formula’.<sup>25</sup> Participants perceived toddler milks to be appropriate for infants under 12 months and of equal nutritional value to breastmilk.
- An Australian study looking at parental recall of ‘formula’ advertisements found that 68% had reported seeing an advertisement for infant formula.<sup>26</sup> This indicates that there is a lack of consumer understanding about the difference between infant formula and toddler milks, and that the marketing of toddler milks is cross-promoting infant formula.
- A recent study of 1,645 US parents and other primary caregivers of infants and toddlers (6–36 months) found that:
  - caregivers were confused about the difference between infant formula and toddler milk, with 11% of infant caregivers surveyed mistakenly serving them a toddler milk product
  - 60% of toddler caregivers surveyed agreed with the unsupported claim that toddler milks provide nutrition that toddlers do not get from other foods.<sup>27</sup>

The rise of digital marketing of toddler milks is also an area of growing concern. Through digital platforms, advertisers are able to collect extensive information about consumers which allows them to create and disseminate highly personalised targeted marketing. This kind of marketing is delivered directly to personal devices, meaning that consumers are able to be targeted by marketing constantly.

There is recent evidence to suggest new mothers with an infant less than six months old are being targeted (see Figure 2). This further highlights the cross-promotional strategies employed by companies and the way that the breastmilk substitute industry is capitalising off the weak protections currently in place and the confusion surrounding these products.

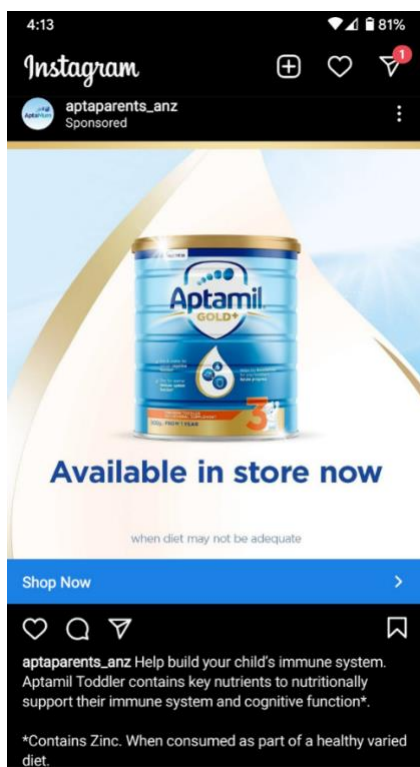


Figure 2: A sponsored targeted Instagram post to a new mother with an infant less than six months old from a toddler milk company.

Therefore, given the potential negative impacts of marketing tactics used by manufacturers that sit outside the scope of the MAIF Agreement, VicHealth strongly recommends that the ACCC adds a

condition to the re-authorisation of the Agreement that prohibits the cross-promotional efforts that are used by infant formula and toddler milk companies.

## Appendix 1: Further comments

The MAIF Agreement was first authorised in 1992, and nearly three decades later it fails as a framework to regulate the marketing of breastmilk substitutes in a way that best supports the health needs of Australia's infants, toddlers and children.

The WHO and UNICEF *Global strategy for infant and young child feeding* calls on governments to protect, promote and support breastfeeding through policy action, including the adoption of the International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly resolutions into national legislation.<sup>28</sup>

Globally, 136 countries have implemented legislation to support the Code. However, Australia has not done so, and is failing to meet international standards. In 2020, the WHO reported that Australia is one of 58 countries as having 'no legal measures' in place to support the Code.<sup>29</sup>

While we are pleased to see the ACCC consider broadening the scope of the MAIF Agreement to apply to all breastmilk substitutes for the next five years, there are subsequent inadequacies outlined in VicHealth's previous submission, which were noted in the draft determination but deemed out of scope.

The commitment by the Department of Health to undertake an independent review of the MAIF Agreement in 2021, as outlined in the *Australian National Breastfeeding Strategy: 2019 and Beyond* and the ACCC's draft determination, is strongly supported by VicHealth. It is imperative that the inadequacies of the MAIF Agreement are addressed in the upcoming review, with a view to informing a government led regulatory approach to breastmilk substitutes in Australia.

We reiterate that the MAIF Agreement does not meet the requirements necessary to reflect Australia's response to the Code. Australia requires a regulatory environment that promotes breastfeeding for all mothers and babies and protects them from marketing of breastmilk substitutes. We hope that the outcomes of the Department of Health's review can support a move towards government-led regulatory measures that promote breastfeeding and aligns with the WHO Code. This will require the measures to:

- apply to all 'breastmilk substitutes', which includes any milks in either liquid or powdered form that are marketed for infants and young children up to the age of three years
- ensure that these breastmilk substitutes cannot be marketed in any form, including by retailers and on digital platforms
- apply to retailers and distributors (e.g. supermarkets and pharmacies) in addition to manufacturers and importers of breastmilk substitutes.

To complement regulatory measures that restrict the marketing of breastmilk substitutes, other measures including monitoring and effective enforcement will be required to ensure companies comply.<sup>30</sup>

## References

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