

# Infant formula and follow-on formula market study

Invitation to comment

20 February 2024



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# Summary

## Introduction

1. The CMA is undertaking a market study into the supply of infant formula<sup>1</sup> and follow-on formula<sup>2</sup> in the UK. This follows our announcement on 29 November 2023 that we would carry out further work in this area, in light of concerns that weak or ineffective competition could be leading to consumers paying higher prices than they need to.<sup>3</sup>
2. This invitation to comment document:
  - explains why we are taking our work forward, from this point, through a market study;
  - recaps the findings of our November update in our review of competition in the groceries sector, and developments since then;
  - sets out the proposed scope of this market study;
  - explains the themes the market study will consider and how we intend to carry it out; and
  - sets out the issues we are seeking your views on, how to respond to this invitation to comment, and next steps.

## Why we are launching a market study

3. The update on the CMA's work in the groceries sector, published on 29 November 2023, highlighted concerns that weak or ineffective competition in the infant formula market might be keeping prices higher than they might otherwise be. Data submitted to the CMA by First Steps Nutrition Trust (FSNT) showed that the average price per pack of powdered cow's milk-based infant formula had

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<sup>1</sup> Infant formula is designed for use in the first months of life and is the only substitute for breastmilk which can satisfy, by itself, the nutritional requirements of healthy babies until appropriate complementary feeding is introduced. As set out in the Market Study Notice published alongside this invitation to comment, the scope of the market study also includes formulas labelled by manufacturers as foods for special medical purposes – such as certain 'anti-reflux' and 'comfort' formulas – that are suitable from birth and can be sold directly to consumers (but which may not strictly be classified as “infant formula” for the purposes of the relevant regulations).

<sup>2</sup> Follow-on formula is a product for use by infants once complementary feeding has started (generally from six months), intended to constitute the principal liquid element in a progressively diversified diet. Official sources advise that follow-on formula is unnecessary. All major suppliers of infant formula also sell follow-on formula.

<sup>3</sup> CMA publication: [Price inflation and competition in food and grocery manufacturing and supply \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

risen by 25% between March 2021 and April 2023,<sup>4</sup> and that families could make savings of more than £500 over the first year of a baby's life through buying cheaper infant formula options.<sup>5</sup>

4. Even as prices rise, consumers must generally continue to buy infant formula in the same quantities. It is particularly concerning that, in the face of broader cost of living pressures, there have been reports of some consumers resorting to shop-lifting formula, buying infant formula on the black market, or unsafe feeding practices.<sup>6</sup>
5. In our November report we highlighted that consumers may not always be equipped to make well-informed choices and that suppliers may face insufficient incentives to offer infant formula at competitive prices. We committed to further examine this market, and gather further evidence to better understand:
  - consumer behaviour, the drivers of choice, and the information and advice available to consumers to support their decisions;
  - barriers to entry and expansion for infant formula manufacturers; and
  - the role of the regulatory framework and its enforcement in influencing market outcomes.
6. Given the importance of the issues under scrutiny, and the likelihood that our work may result in recommendations to government (including potentially in relation to the regulatory landscape), we consider it appropriate, from this point, to progress our work in this area as a market study,<sup>7</sup> enabling the use of formal investigatory powers. Proceeding on this basis will help to ensure that our findings, and subsequent recommendations, are based on the best available evidence. It will also ensure that our work can proceed at pace, commensurate with a statutory timetable, including statutory time limits on responses to our information requests.
7. Launching a market study triggers statutory time limits in relation to our work in this area. This includes a requirement to publish, within 12 months, a market study report, setting out our findings and the action (if any) we propose to take.

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<sup>4</sup> Average price calculated using specific products, including what FSNT classifies as market leaders (Aptamil Advanced (Danone), Aptamil Organic (Danone), SMA Pro (Nestle), SMA Little Steps (Nestle), SMA Advanced (Nestle), Aptamil (Danone) and Cow & Gate 1 (Danone)) and Aldi's own-label product, Mamia.

<sup>5</sup> CMA publication: [Price inflation and competition in food and grocery manufacturing and supply \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), Figure 5.1. The annual cost may be higher for parents that use goats' milk or liquid based infant formula products.

<sup>6</sup> For example: [Desperate parents are stealing baby formula to keep their children fed | UK News | Sky News](#) and [Co-op stores in England put baby formula behind tills to deter theft | UK cost of living crisis | The Guardian](#)

<sup>7</sup> Work in this area to date has been carried out under the CMA's general review functions (Sections 5 and 6 of the [Enterprise Act 2002](#)). This function enables the CMA us to collect evidence and publish its analysis and assessment of it; but it does not provide formal investigation powers.

However, in this case, given the work already undertaken, we currently expect to be able to issue a report by September 2024.<sup>8</sup>

8. The primary focus of our November update was infant formula, but we considered follow-on formula to the extent that it affected how the market for infant formula works. Although we propose that infant formula continues to be the core area of focus for our work, we consider that follow-on formula should also form part of the scope of this market study because:
  - although official advice states it is not necessary to switch to follow-on formula,<sup>9</sup> consumers may perceive it to be a close substitute for infant formula for babies aged 6 to 12 months; and
  - as set out in November update, there may be important relationships between how follow-on formula is sold and marketed, and outcomes in the infant formula market, such as which brand consumers choose and whether they opt for a standard or premium product.
9. Milks marketed for children over 12 months of age – in particular, ‘growing up’ and ‘toddler’ milks<sup>10</sup> – may affect how the markets for infant formula and follow-on formula operate. For this reason, we propose that they are included within the scope of our market study, to the extent that these affect competition in the market for infant formula and follow-on formula.
10. The proposed scope of the market study is explained further in The scope and focus of this market study section below.

## Key features of the market

11. This section summarises relevant findings from our November groceries update,<sup>11</sup> and key developments that have taken place since. Reflecting the focus of our November update, our work since then, and the planned focus of the market study going forward, this section principally considers the key features of the infant formula market, although features of the follow-on formula market are set out where relevant.

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<sup>8</sup> Legislation: [Enterprise Act 2002](#).

<sup>9</sup> NHS publication: [Types of formula, NHS](#)

<sup>10</sup> Growing up milks (or toddler milks) are generally marketed for children from 12 months of age. There are no specific compositional regulations for these products and NHS advice states that there is no evidence to suggest that they provide any nutritional benefits for children that cow’s milk cannot provide. All major suppliers of infant formula also sell growing up milks.

<sup>11</sup> CMA publication: [Price inflation and competition in food and grocery manufacturing and supply \(publishing.service.gov.uk\)](#)

### ***Infant formula is an essential, non-substitutable product***

12. For governments in the UK, breastfeeding is an important public health priority.<sup>12</sup> There can, however, be circumstances where breastfeeding is not possible, or only possible in combination with bottle feeding. Alternatively, parents may make a choice not to breastfeed, or to combine breast and bottle feeding.
13. Infant formula is designed for use in the first months of life and is the only substitute for breastmilk which can satisfy, by itself, the nutritional requirements of healthy babies until appropriate complementary feeding is introduced. As such, infant formula is an essential and non-substitutable product and one which many consumers must continue to purchase in the same quantities, even in the face of price rises.<sup>13</sup>
14. Complementary feeding begins at around six months. From this point and up to one year of age, caregivers will still need to provide infants with either breastmilk, infant formula or follow-on formula. As such, infant formula or follow-on formula can, for some consumers, continue to be essential and non-substitutable products.<sup>14</sup>

### ***The infant formula market is highly concentrated***

15. Danone, which produces the Aptamil and Cow & Gate brands, had a 71% share, by value in the 52 weeks to July 2023, of the infant formula market. Other branded manufacturers had lower shares. Nestle's SMA and Little Steps infant formula products accounted for 14%, while Kendamil and HiPP had relatively smaller shares of this market at 9% and 5% respectively.<sup>15</sup> Market shares for follow-on formula are not available, but are likely to be similar.
16. There is very weak own-label presence in the market for infant formula. Aldi is the only retailer to produce an own-label product, under the Mamia brand. CMA analysis of Kantar data showed that own-label products accounted for 5% of the market for infant formula and follow on formula by volume.<sup>16</sup> Sainsbury's and Boots used to sell own-label infant formula but no longer do so. There is no own-label follow-on formula.

### ***Prices have risen in recent years and suppliers have sustained high profit margins***

17. The price of infant formula has been rising in the recent years. CMA analysis of FSNT data indicates that, between March 2021 and April 2023, the average price

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<sup>12</sup> See for example, [Early years high impact area 3: Supporting breastfeeding - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>13</sup> It can be very challenging to start (or re-start) breastfeeding once a mother's milk supply has ceased, and increasing breastmilk supply where a combination of breast and bottle are used can take time.

<sup>14</sup> Albeit with declining significance as infants increasingly gain their nutrients from solid/non-solid foods and liquids.

<sup>15</sup> According to IRI market share data we received from one infant formula manufacturer.

<sup>16</sup> Kantar, February 2023 data (the last period when own-label sales data was available). Includes infant formula and follow-on formula.

per pack of powdered cow's milk-based infant formula increased by 25%.<sup>17</sup> The average price rise for the market leaders was 24%, compared to 45% for Aldi's Mamia.<sup>18</sup> Reflecting the often essential nature of infant formula, despite price rises, total sales volumes have remained relatively constant during this time.<sup>19</sup>

18. Across the ten product categories considered as part of our groceries work, we found that infant formula had among the highest profit margins, measured as a percentage of revenue. We also found some evidence that, over recent years, manufacturers had been able to sustain these margins, and raise prices faster than their input costs had risen.<sup>20</sup>

### ***Composition, labelling and marketing of infant formula is tightly regulated***

19. The composition of both infant formula and follow-on formula is tightly regulated to ensure its safety and suitability for infants under 12 months (see Box 1). For example, the requirements cover energy value and protein content. Ingredients other than those required can be voluntarily added by manufacturers, unless prohibited or restricted in the regulations, and where their suitability for infants can be demonstrated using appropriate data and studies.

20. However, the regulations seek to ensure that all infant formula products will satisfy, by themselves, the nutritional requirements of infants in good health until appropriate complementary feeding is introduced. The NHS states that this means that, 'there's no evidence that switching to a different formula does any good or harm'.<sup>21</sup>

#### **Box 1: Nutrition law is an area of devolved competency**

Responsibilities for legislating and enforcement regarding infant formula and follow-on formula sit with each of the UK's devolved nations. The Department of Health and Social Care (DHSC), the Scottish Government and the Welsh Government are the competent authorities for each nation in Great Britain.

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<sup>17</sup> Average price calculated using specific products, including what FSNT classifies as market leaders (Aptamil Advanced (Danone), Aptamil Organic (Danone), SMA Pro (Nestle), SMA Little Steps (Nestle), SMA Advanced (Nestle), Aptamil (Danone) and Cow & Gate 1 (Danone)) and Aldi's own-label product, Mamia.

<sup>18</sup> Publication: [Cost of powdered infant formulas in the UK: How have they changed since January 2020?](#), FSNT, May 2023. Graph 1 which compares the unit cost of all brands cow's milk based powdered infant formula and Graph 2 which examines the unit cost of market leaders' powdered first infant formula and Aldi's Mamia compared to the weekly Healthy Start allowance.

<sup>19</sup> CMA analysis based on Kantar Worldpanel Take Home panel data.

<sup>20</sup> CMA publication: [Price inflation and competition in food and grocery manufacturing and supply](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk))

<sup>21</sup> NHS publication: [Types of formula](#), NHS



The Food for Specific Groups Regulation (EU) No 609/2013 (Assimilated direct legislation)<sup>22</sup> sets out general rules on the composition and labelling of food for infants and young children.<sup>23</sup> Out of this overarching regulation came two more specific regulations dealing with the nutritional content, labelling and marketing of (i) infant formula and follow-on formula and (ii) foods for special medical purposes.

In Great Britain, the nutritional content, labelling and marketing of infant formula and follow-on formula is principally regulated via the Commission Delegated Regulation (EU) 2016/127 (Assimilated direct legislation)<sup>24</sup> while Commission Delegated Regulation (EU) 2016/128 (Assimilated direct legislation) relates to foods for special medical purposes, including those developed to satisfy the nutritional requirements of infants.<sup>25</sup>

The Northern Ireland Protocol (NIP) means that EU legislation relating to nutrition (as detailed in Annex 2 to the NIP) is directly applicable in Northern Ireland.<sup>26</sup> The DHSC explains in guidance that Northern Ireland continues to play a vital role in policy development for nutrition legislation in Great Britain and that the UK-wide provisional common framework for Nutrition Related Labelling, Composition and Standards ensures that any impacts on the UK internal market are limited.<sup>27</sup>

These regulations are enforced in England by The Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-On Formula) (Information and Compositional Requirements) (Amendment Etc.) (England) Regulations 2020, The Food for Specific Groups (Information and Compositional Requirements) (England) Regulations 2016 and the Food for Specific Groups (Information and Compositional Requirements) (Amendment) (England) Regulations 2019.<sup>28</sup> Similar enforcement legislation applies in Scotland, Wales and Northern Ireland.

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<sup>22</sup> As per s5 of the Retained EU Law (Revocation and Reform) Act 2023 legislation formerly known as 'Retained direct EU legislation' is, from 1 January 2024, to be known as 'Assimilated direct legislation'.

<sup>23</sup> The Nutrition (Amendment) And Food For Specific Groups (Food For Special Medical Purposes For Infants, Infant Formula and Follow-On Formula (Information and Compositional Requirements) (Amendment) Regulations 2021 amended the date of application of the provisions relating to infant formula and follow-on formula made from protein hydrolysates under Commission Delegated Regulation 2016/127 (Assimilated direct legislation).

<sup>24</sup> Legislation: [Commission Delegated Regulation \(EU\) 2016/127](#) (Assimilated direct legislation)

<sup>25</sup> Legislation: [Commission Delegated Regulation \(EU\) 2016/128](#) (Assimilated direct legislation)

<sup>26</sup> Following the UK's exit from the EU, retained EU regulations and tertiary legislation relating to nutrition were amended by the Nutrition (Amendment etc.) (EU Exit) Regulations 2019 and the Nutrition (Amendment etc.) (EU Exit) Regulations 2020; these changes are necessary to ensure that the UK's obligations under the NIP are met and that EU nutrition legislation remains directly applicable in Northern Ireland, as required by Annex 2 of NIP for as long as the protocol remains in force. The 2023 Windsor Framework amended the NIP to introduce a 'Stormont brake' which provides a mechanism for the Northern Ireland Assembly (via the UK Government) to veto the application in Northern Ireland of certain updated or amended EU laws relating to goods, agriculture and some customs laws that fall within the scope of the original NIP. The January 2024 new devolution deal for Northern Ireland will amend part of the European Union (Withdrawal) Act 2018 that provides the legal mechanism through which certain EU laws are given legal effect in the UK to make reference to the Stormont brake. As such, the Stormont brake mechanism, if used, may result in certain updated or amended EU laws (as set out above) no longer being directly applicable in Northern Ireland.

<sup>27</sup> Government publication: [DHSC guidance on retained Commission Delegated regulation \(EU\) 2017/127](#)

<sup>28</sup> Government publication: [DHSC guidance on retained Commission Delegated regulation \(EU\) 2017/127 and The Food for Specific Groups \(Information and Compositional Requirements\) \(Amendment\) \(England\) Regulations 2019](#)

21. The labelling, promotion and advertising of infant formula is also tightly defined in regulations (see Box 2), to avoid discouraging breastfeeding and to protect infant health. Among other things, the regulations prohibit the advertising and promotion of infant formula directly to consumers, including commercial practices at the retail level such as special displays or discount coupons which could induce sales. Also prohibited is the provision of free or low-priced products to members of the general public or to pregnant women, mothers or members of their families.

**Box 2: Article 10: Requirements for promotional and commercial practices for infant formula<sup>29</sup>**

Advertising of infant formula shall be restricted to publications specialising in baby care and scientific publications. The appropriate authority may further restrict or prohibit such advertising. Such advertising shall contain only information of a scientific and factual nature. Such information shall not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding.

There shall be no point-of-sale advertising, giving of samples or any other promotional device to induce sales of infant formula directly to the consumer at the retail level, such as special displays, discount coupons, premiums, special sales, loss-leaders and tie-in sales.

Manufacturers and distributors of infant formula shall not provide, to the general public or to pregnant women, mothers or members of their families, free or low-priced products, samples or any other promotional gifts, either directly or indirectly via the health care system or health workers.

Donations or low-price sales of supplies of infant formula to institutions or organisations, whether for use in the institutions or for distribution outside them, shall only be used by or distributed for infants who have to be fed on infant formula and only for as long as required by such infants.

***The labelling and marketing regulations for follow-on formula, and other baby formulas, are different***

22. The labelling and marketing regulations are different for follow-on formula. Advertising and promotion to consumers is allowed for this product, although the regulations require that: 'The labelling, presentation and advertising of infant formula and follow-on formula shall be designed in such a way that it avoids any risk of confusion between infant formula and follow-on formula and enables consumers to make a clear distinction between them, in particular as to the text,

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<sup>29</sup> Legislation: [Commission Delegated Regulation \(EU\) 2016/127](#) (Assimilated direct legislation)

images and colours used.’ All major brands market their follow-on formula products across a range of channels.

23. Brands typically market follow-on formula as being suitable from 6 to 12 months, and as representing the ‘next stage’ of the feeding process. The Scientific Advisory Committee on Nutrition considers that there is ‘no nutritional justification’ for a change at 6 months to follow-on milk. In the US, where infant formula products can be marketed direct to consumers, products are typically marketed as being suitable from birth to 12 months, and follow-on products are not widely available.
24. The regulations also differ for products labelled as foods for special medical purposes.<sup>30</sup> It is up to manufacturers to determine whether a formula should be labelled as a food for special medical purposes, but current examples include certain ‘anti-reflux’ and ‘comfort’ formulas. Some of the formulas labelled as foods for special medical purposes are widely available from retailers, and sold alongside ‘standard’ infant formula – often under the same brand names and in similar packaging – although consumers are notified that they should seek advice from health professionals before use.<sup>31</sup>
25. There are no specific compositional, labelling or marketing regulations for growing-up milks,<sup>32</sup> however, they typically use similar branding and labelling to infant formula and follow-on formula.
26. As we noted in our November update, regulations around the marketing of infant formula are not always adhered to. Over the past few years, the Advertising Standards Agency (ASA) has ruled that several advertisements have breached the UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing (CAP Code).<sup>33</sup>

### ***There is significant brand and price differentiation between infant formula products***

27. Where a product is compositionally very similar, and suppliers cannot advertise or make distinctive claims about it, it would ordinarily be expected that there

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<sup>30</sup> Legislation: [Commission Delegated Regulation \(EU\) 2016/128](#) (Assimilated direct legislation). As the Baby Feeding Law Group - UK explains, these are designed for infants with a diagnosed disease, disorder or medical condition. The regulations cover composition, labelling and marketing. Publication: Baby Feeding Law Group - UK (2022) [Infant milks marketed as foods for special medical purposes](#)

<sup>31</sup> The NHS explains which baby milks should be used following advice from health professionals here: [Types of formula milk - NHS \(www.nhs.uk\)](#)

<sup>32</sup> Publication: First Steps Nutrition Trust (2021) [Drinks for young children marketed as ‘growing-up’ and ‘toddler milk’](#)

<sup>33</sup> The CAP Code (along with the Broadcast Advertising Code) has regard to the rules on advertising infant formula and follow-on formula contained in the Commission Delegated Regulation (EU) 2016/127 (Assimilated direct legislation). The ASA advises marketers to have regard to these regulations and other relevant food law when preparing ads. [Advertising codes - ASA | CAP](#). Specifically, the ASA rules that several advertisements had the effect of, for example, marketing infant formula and making health claims for infant formula.

would be limited price differentiation. But prices of infant formula – even between brands produced by the same supplier – differ significantly.

28. According to FSNT, the price per 100ml of reconstituted powdered infant formula based on cow's milk in August 2023 varied from 13p per 100ml for the cheapest product (Cow & Gate First Infant Milk, 1200g pack) to 35p per 100ml for the most expensive (Aptamil 1 First Milk Tabs, 552g pack).<sup>34</sup> The annual costs of using the most expensive branded product can add up to £1,000 to feeding costs during the first 12 months of life – more than twice as much as using own-label infant formula.<sup>35</sup>

### ***Consumers choose a brand at a vulnerable moment, and brand loyalty is high***

29. There is limited published research on what influences consumer choice of particular infant formula products, or whether to use infant formula at all. However, we have seen evidence that around three quarters of consumers choose an infant formula product pre-birth or at birth (in hospital). This can be a particularly vulnerable time and consumers will naturally want to make the best possible choice for their baby and look for information and assurance in order to do so.

30. Despite the lack of published research, we have heard concerns from stakeholders that consumers may not have the right information at the right time to make well informed purchasing choices. In particular, we heard concerns that there is low consumer awareness that all infant formula products provide all of the nutrients a healthy infant needs until complementary feeding is introduced.

31. Stakeholders we engaged with during our initial research told us that the following factors are the likely biggest drivers of consumer decision-making in this market: recommendations from friends and family, advice from health professionals, brand awareness generated through marketing of follow-on formula and other growing up milks and other services like baby clubs, previous experience with a particular brand and seeing and using a particular brand in healthcare settings.

32. Despite the fact that all infant formula products provide all the nutrients a healthy infant needs until complementary feeding is introduced, and the significant price differences between the cheapest and most expensive products, we heard that lower prices were not a significant factor in consumer decision-making. One supplier sent us survey data received from MetrixLab in 2023 showing that only 5% of parents make decisions on infant formula based on pricing.

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<sup>34</sup> Publication: FSNT (2023), [Costs of infant formula, follow-on formula and milks marketed as foods for special medical purposes available over the counter in the UK](#), Table 3

<sup>35</sup> CMA publication: [Price inflation and competition in food and grocery manufacturing and supply](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk))

33. There is also relatively little switching between infant formula brands. The same survey data showed that over 65% of parents only use one brand of infant/follow on formula. Where switching does occur, it is not usually for cost reasons. Of the 35% of parents who switched infant formula brand in this survey, almost half did so because their baby was not happy<sup>36</sup> and only 18% did so because the brand was too expensive.
34. Reflecting this, there appears to be little evidence that, in the face of growing cost-of-living pressures over recent years, consumers have switched to the cheapest brands, or own-label alternatives (or that consumers newly entering the market are increasingly choosing these options). This is despite there being savings from doing so, and despite regulations ensuring that all infant formula products provide all the nutrients a healthy baby needs, until complementary feeding is introduced (see above).

***Although marketing and promotion of infant formula is restricted, suppliers appear able to influence consumer choice in other ways***

35. Although regulations restrict the marketing of infant formula, reaching consumers pre-birth or very shortly afterwards is important for brands to sustain and grow market share, given that choices are made early on, switching is low, and consumers are only in the market for a short period of time.
36. Stakeholders have told us that, notwithstanding these regulations, manufacturers were able to raise awareness of their brands, and influence consumer choices about which infant formula to purchase, through other means: for example, targeted digital marketing of baby clubs; the promotion of follow-on formula in similar packaging to infant formula; marketing follow-on formula as a natural 'next step' once an infant reaches six months of age despite infant formula being suitable up to 12 months; the use of customer reviews and testimonials; the supply of formula to NHS hospitals; and marketing and provision of information to health professionals.

***Recent developments***

37. Our understanding of the key features of the infant formula market set out in the November update has not materially changed. However, two developments are worth noting:
38. First, with reports continuing of consumers struggling to afford formula and supplies running low in food banks, there have been growing calls for regulatory change and/or clarification, including around:

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<sup>36</sup> 'My baby did not get on well/had stomach issues' (29%) and 'My baby did not like the taste' (18%)

- non-cash purchases of infant formula (for example, through vouchers or loyalty points);<sup>37</sup> and
- price promotions, and the ability of retailers to ‘advertise’ the price at which they sell infant formula.<sup>38</sup>

39. Second, it was reported in January that Danone had reduced the wholesale price of one of its products (Aptamil powdered infant formula) by 7%. Following that, retailers including Asda, Iceland, Tesco, Sainsbury’s and Morrisons cut the retail price of some Aptamil formula products.<sup>39</sup>

## The scope and focus of this market study

40. We propose that this market study considers the supply of infant formula and follow-on formula to consumers in the UK, looking at both the manufacturing and retailing segments of the market. In particular, the scope encompasses:

- infant formula and follow-on formula as defined in Commission Delegated Regulation (EU) 2016/127;<sup>40</sup> and
- formulas labelled by manufacturers as foods for special medical purposes developed to satisfy the nutritional requirements of infants as defined in Commission Delegated Regulation (EU) 2016/128 and, specifically, that are (a) suitable from birth, and (b) can be sold directly to consumers without prescription.<sup>41</sup> This includes, for example, certain ‘anti-reflux’ and ‘comfort’ formulas.

41. It is our intention that the core focus of our market study is infant formula because it is often an essential product for consumers who choose to, or have to, use it. For around the first six months of an infant’s life it is also a non-substitutable product – infant formula is the only alternative to breastmilk which can satisfy, by itself, the nutritional requirements of healthy babies until appropriate complementary feeding is introduced. The essential, non-substitutable nature of infant formula is compounded by the fact that it can be very challenging to start (or re-start) breastfeeding once a mother’s milk supply has ceased, and increasing breastmilk supply where a combination of breast and bottle are used can take time.

42. Once complementary feeding has been introduced (generally from six months) consumers can continue to use infant formula, or they can choose to use follow-on formula. Since follow-on formula is a substitute for infant formula for babies

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<sup>37</sup> See for example: [Huge UK supermarket to accept vouchers as payment for baby formula | UK News | Metro News](#)

<sup>38</sup> See for example; [It’s time to change the law on infant formula – About Iceland](#)

<sup>39</sup> See for example: [Aptamil baby milk: Big supermarkets cut price of formula - BBC News](#)

<sup>40</sup> Legislation: [Commission Delegated Regulation \(EU\) 2016/127](#) (Assimilated direct legislation)

<sup>41</sup> Legislation: [Commission Delegated Regulation \(EU\) 2016/128](#) (Assimilated direct legislation)

aged 6 to 12 months, and because it is subject to different marketing regulations that may affect the operation of the infant formula market, we also intend to include this product within the scope of our market study.

43. Similarly, we intend to include within the scope of our market study, formulas labelled by manufacturers as foods for special medical purposes developed to satisfy the nutritional requirements of infants that are suitable from birth, and can be purchased by consumers directly from retailers without a prescription. These products, which are generally sold alongside infant and follow-on formula, in similar packaging, fulfil the same purpose as these products, even though they may be regulated separately.
44. We also consider that growing up milks marketed for children over 12 months of age (also called toddler milks or 'stage 3' or 'stage 4') should be within the scope of our work, to the extent that these affect competition in the market for infant formula and follow-on formula.
45. We propose to exclude formulas for infants aged from birth to 12 months available on prescription only.
46. We do not intend to take a view on the policy objectives that relate to this market, such as the promotion of breastfeeding. However, in forming any recommendations to strengthen competition and improve consumer outcomes, we would look to understand and take account of these objectives, and avoid proposals that could undermine them.
47. We propose that the geographical scope of this market study is the UK. However, we note that nutrition law is a devolved competency and that EU legislation relating to nutrition is directly applicable in Northern Ireland (see Box 1 above). Any recommendations regarding nutrition law or policy to governments in the UK will take this into account.

## **Themes this market study will focus on**

48. We are concerned that consumers may not always be equipped to make well-informed choices and suppliers may face insufficient incentives to offer infant formula at competitive prices. With this in mind, this market study will gather additional evidence in three areas:
  - consumer behaviour, the drivers of choice, and the information and advice available to consumers to support their decisions;
  - the role of the regulatory framework and its enforcement in influencing market outcomes; and
  - supply-side features of the market.

### ***Consumer behaviour, the drivers of choice, and the information and advice available to consumers to support their decisions***

49. As we have noted in paragraph 29, consumers who have chosen to, or want to use infant formula will naturally want to make the very best choice possible for their infant. They will therefore look for information, advice and guidance to inform their decision making and provide reassurance. However, the information that consumers receive about infant formula is limited in order to avoid discouraging breastfeeding and to promote infant health.

50. In this market study we are seeking to understand more about when consumers choose a brand of infant formula, the information they receive or seek out to inform their decision (both the source and the substance), and how this and other influences affect their choice of formula brand.

### ***The role of the regulatory framework and its enforcement in influencing market outcomes***

51. Although brands are prohibited by regulation from marketing infant formula, or making any health-related claims, we are concerned that other ways are used to influence consumers at key moments, and persuade them to choose more expensive brands as outlined above in paragraph 35.

52. Although brands may engage in 'indirect' marketing and cross promotion to influence consumer choice of infant formula, the strict regulatory prohibitions on 'direct' marketing may have a restrictive effect on the ability of both retailers and suppliers to communicate their prices to consumers. This may be acting to limit competition on the price of infant formula.

53. We want to understand more about how suppliers respond to the regulations and their enforcement; how their marketing strategies are shaped by the regulatory environment; and whether changes could strengthen price competition without undermining other public policy objectives.

### ***Supply-side features of the market***

54. We are also exploring other supply-side features of the market, including:

- the impact of a highly concentrated manufacturing market segment, and likely strong bargaining position with respect to retailers; and more generally the incentives of retailers to negotiate with suppliers on price of the infant formula they purchase;
- the lack of price differentiation at retail level and whether this may signal limited price competition at the retail level of the market (see paragraph 27).



- barriers to entry and expansion, including barriers to own-label suppliers. While we have seen some examples of entry into the market for the supply of infant formula, small or new infant formula manufacturers are generally unable to successfully challenge the strong market position held by incumbent suppliers. Unlike in other markets assessed in our November update, own-label does not have a strong presence in the market currently, and previous own-label offerings from Boots and Sainsbury's have been withdrawn;
- how research and development works in the market; the extent to which manufacturer innovation leads to better infant formula products; whether there is scope for further innovation in this market, and, if so, where the opportunities might be and how any barriers might be overcome.

## How we will carry out this market study

55. We invite comment from any interested parties (see 'Questions for stakeholders', below), and will be engaging closely with key stakeholders, including governments in all four UK nations, other public authorities, third-sector bodies and representative groups.

56. Alongside the publication of this invitation to comment and our Market Study Notice, we will be issuing requests for information to suppliers and retailers of infant formula. We also intend to carry out interviews and meetings with these groups in due course. In addition, we will be inviting research companies to submit bids to undertake qualitative research with consumers who have recently purchased infant formula.

57. Following our evidence-gathering and analysis we will consider whether there are problems in the infant formula market, and if so whether to recommend that any actions could or should be taken to address these. This could include making recommendations to the UK and/or devolved nation governments or industry. Should we find evidence of any breaches of competition or consumer law, we would expect to initiate separate enforcement action.

58. The CMA's market study tool has a statutory time limit of 12 months: that is a report on our work must be published within this period. However, in this case, we expect to be able to issue a report sooner than the 12-month deadline.

## Questions for stakeholders

59. We are seeking input on the issues raised in this invitation to comment and the accompanying Market Study Notice.<sup>42</sup> We welcome views on any of the issues we have raised, from stakeholders of all kinds, especially those which are

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<sup>42</sup> Including on whether the CMA should make a market investigation reference under section 131 of the [Enterprise Act 2002](#).

supported by evidence. These may cover potential problems in how the UK infant formula market is working for consumers, as well as measures to improve how the market functions to deliver better outcomes for consumers. In addition to general submissions, we welcome responses to any of the questions in the box below.

### **Box 3: Consultation questions**

#### ***General questions***

- Do you agree with our proposed scope (both the product and geographic scope) and themes for this market study, as set out in paragraphs 40 to 54. If not, what other areas should we focus on and why?
- What, if any, are the key differences in the infant formula market in each of England, Scotland, Wales and Northern Ireland that should be reflected in our analysis? Please explain any such differences and how each may affect the analysis.

#### ***Consumer behaviour***

- How do consumers choose which infant formula to use and what factors drive their decisions? What is the relative importance of these different factors?
- How does price influence which infant formula consumers choose?
- Where do consumers get information about infant formula from, and which of these sources are most influential and trusted?
- How do consumers evaluate the quality of different infant formulas? Are they able to accurately observe their quality and make meaningful comparisons?
- To what extent are consumers aware of the different infant formulas? What do consumers perceive to be the differences between them to be?
- Are consumers aware that all infant formulas provide all of the nutrients a healthy baby needs?
- Do consumers try more than one infant formula at the outset or consider switching later on? What factors drive their decisions and influence their choices?
- To what extent is it possible to influence consumer decision-making either when the initial decision about which infant formula to use is made or later on? Does this vary for different consumers?
- Are there any ways in which consumers could be provided with more or better information on infant formula and follow-on formula?
- What other changes, if any, could help consumers to make more effective choices in respect of infant formula and follow-on formula?

#### ***The role of the regulatory framework***

- Are the regulations around labelling and marketing of infant formula enforced effectively? If not, how could enforcement be improved?
- Do manufacturers indirectly promote infant formula, and/or cross-market it via other products? If yes, how do they achieve this and what is the impact on consumers?
- Does manufacturer engagement with the healthcare sector affect consumer outcomes? If yes, how does this occur and what is the impact on consumers?
- Could the regulatory framework be improved to deliver better outcomes for consumers? If so, what do you consider should be changed and why?

### ***Supply-side features of the market***

- How strongly do infant formula manufacturers compete on price, and what could be done to strengthen price competition?
- Are there any ways in which the entry and expansion of brands or own-label products could be encouraged and supported? If so, what do you consider could be done and why?
- Why is there a lack of price differentiation for infant formula at a retail level?
- How far does manufacturer innovation lead to better infant formula products? Does the regulatory framework provide the right incentives and support for such innovation?
- Is there scope for further innovation in this market? If yes, where are the opportunities; what are there barriers to achieving this; and how might these be overcome?

## **Responding to this consultation and next steps**

60. Please email written submissions to [InfantFormula@cma.gov.uk](mailto:InfantFormula@cma.gov.uk) by 13 March 2024.

61. Please ensure that all personal data, other than your contact details, is redacted or excised from your response and any documents you submit to us.

62. We propose to publish responses to this Invitation to Comment or, where appropriate, a summary. Therefore:

- (a) please supply a brief summary of the interests of organisations you represent, where appropriate.

(b) please consider whether you are providing any material that you believe to be confidential, and explain why this is the case. Please provide both a confidential and non-confidential version of your response where applicable.

63. If you are responding as an individual (ie you are not representing a business or other organisation), please indicate whether you wish your response to be attributed to you by name or published anonymously.

64. An explanation of how we will use the information provided to us can be found in Annex A. This Appendix sets out how the CMA may use information provided to it during the course of this market study, including where we may need to refer to information in order to pursue enforcement action against a business in this sector.

## **Annex A: Use of information provided to the CMA**

1. This annex sets out how the CMA may use information provided to it during the course of this market study, in line with our legal responsibilities. In particular please note that we may choose to refer to comments or evidence that you provide in a published report or publish non-confidential information on our website. This may include identifying the contributor.

### **Why is the CMA asking for information?**

2. The information you provide will help the CMA to understand the market for the supply of infant formula and follow-on formula to consumers in the UK and identify any competition and consumer issues.

### **What will the CMA do with the information I provide?**

3. Your information will inform the CMA's final market study report, and any interim updates. The CMA may publish information you provide and identify you as the contributor of it in those reports, or alongside them on our website. The final market study report will set out the CMA's findings and any proposed remedies to any existing or potential issues it finds.
4. The CMA may disclose any information provided by you for the purposes set out in sections 7, 170 and 241 to 243 of the Enterprise Act 2002, where it considers such disclosure to be appropriate. In particular, the CMA may choose to put information provided by you to third parties, such as other Government departments and other parties providing information to the CMA, for the purpose of facilitating any further related work.
5. Where appropriate, the CMA may share your information within the CMA to facilitate the performance of its functions. Similarly, the CMA may use information you provide to take enforcement action, including against businesses operating in the markets within the scope of this study, using its competition or consumer powers. The CMA may also share your information with another enforcement authority or with another regulator for them to consider whether any action is necessary.
6. Unless an exemption applies, the CMA may disclose the fact that you have provided information to it, and the information you have provided, in accordance with its obligations under the Freedom of Information Act 2000.

### **Will the CMA take steps to protect my information?**

7. The CMA may only publish or share information with others in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, it must have regard to (among other considerations) the need for excluding, so far as is practicable:

- (a) any information relating to the private affairs of an individual which might significantly harm the individual's interests; or
  - (b) any commercial information which, if published or shared, it thinks might significantly harm the legitimate business interests of the undertaking to which it relates.
8. The CMA will redact, summarise, or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.

#### **How will the CMA handle any personal data I provide?**

9. Any personal data you provide to us will be handled in accordance with the CMA's obligations under the UK General Data Protection Regulation and the Data Protection Act 2018. The CMA's [personal information charter](#) sets out the standards you can expect from it when it collects, uses or shares personal data and provides details of your rights in relation to that personal data as well as information on how to contact the CMA.

#### **What should I do if I have concerns about how the CMA will use any information I provide?**

10. You should make clear to the CMA any information that you consider to be confidential when you provide it to the CMA and set out why you consider it to be confidential.
11. If the CMA wants to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact you prior to publication to give you an opportunity to tell it about any concerns you may have regarding that publication.

#### **Where can I find further information?**

12. Further details of the CMA's approach can be found in in [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).