

CMA INFANT FORMULA MARKET STUDY

Nutricia Limited (trading as Danone UK) Response to the CMA's Invitation to Comment

Introduction.

1. Danone UK welcomes the opportunity to respond to the CMA's invitation to comment (**ITC**) on the market study into infant formula (**IF**) and follow-on formula (**FOF**). Danone UK's use of the terms IF and FOF corresponds with the CMA's definitions in its ITC – namely, IF is designed for babies 0-6 months and is the only substitute for breastmilk and FOF is designed for babies 6-12 months.
2. Danone UK is committed to giving babies the very best nutritional start in life. Based on its scientific expertise, Danone UK, like the World Health Organization, recognises the importance of breastfeeding for infant and maternal health.
3. Danone UK also understands that parents and caregivers need to access information to make informed feeding decisions for their babies, while personal circumstances and needs are different from one family to another. For parents who cannot or choose not to breastfeed, Danone UK strives to be a trusted company, working tirelessly to provide high-quality baby formula (*i.e.*, IF, FOF and stage 3 and 4 milks) to meet a range of needs. To this end, Danone has spent over 50 years studying the composition of breastmilk and its associated benefits, building extensive scientific expertise and delivering pioneering innovations in this sector that offer improved nutritional and health benefits to babies.
4. Through its Cow & Gate and Aptamil brands, Danone UK provides baby formula products that are produced in state-of-the-art facilities that meet or exceed the strict regulatory requirements governing quality and safety. Danone also upholds industry-leading standards for the responsible marketing of IF. It was the first company to adopt a global policy prohibiting the advertising and promotion of IF in any country where it operates, even when permitted by local laws. Since then, Danone has maintained a leading position in responsible baby formula standards amongst global companies while ensuring accurate, scientifically-based information about infant nutrition is readily available to support new or expecting parents.¹ Danone UK is also a member of the British Specialist Nutrition Association and voluntarily signed onto the Infant Nutrition Industry Code, which: was modelled on industry codes of other highly regulated industries (such as the ABPI Code of Practice for the pharmaceutical industry); covers areas of industry practice including responsible marketing, product quality, composition, safety and clinical research; and is regulated by an independent Code of Practice Authority.

¹ Danone UK's current "Responsible Company Practices" policy can be found on its website: <https://www.danone.co.uk/impact/health/responsible-company-practices.html#overview>



5. The ITC, which follows on from the CMA's work in the groceries sector, expresses concern that parents may not always be equipped to make well-informed choices between different formula products, and manufacturers may face insufficient incentives to offer IF at competitive prices.
6. For its part, Danone UK is committed to ensuring that parents and caregivers can access its innovative and high-quality products at competitive prices. Danone UK also agrees that it is critical that parents and caregivers should be able to make well-informed choices based on the best available information.
7. While the unique features of the UK IF market – such as the strict regulatory framework that governs the marketing, promotion and supply of the product – mean that it operates differently to typical grocery markets, the most relevant and recent evidence indicates that the UK market is competitive. This competition has brought new entrants into the market and is driving continuous product innovation, thereby enabling parents and caregivers to select from a wide choice of products with different features and price points, according to their individual preferences or needs.

The UK IF market is competitive.

8. It is widely recognised that a market is competitive when rivals are sufficiently threatening to incentivise each other to improve their offerings to earn competitive advantage (*i.e.*, better quality, lower price, new services, more innovation, etc.).
9. The recent history of the supply of IF in the UK shows a dynamic, competitive and innovative market, with Danone UK, as well as other manufacturers, reacting to competition especially on quality, product range and price offerings. In particular:
 - a. The market is characterised by the continued introduction of innovative **new products and formulations** based on extensive research and development (**R&D**) by a subset of manufacturers (including Danone UK), and **increased ranges of products** to meet babies' diverse demands and requirements [REDACTED]
 - b. Recent market history also shows **significant price competition among manufacturers**, as highlighted by the introduction of larger volume packs to help provide more cost-efficient options to consumers (including Danone UK's first to market launch of such innovations) and wholesale price competition among manufacturers (including Danone UK's recent wholesale price cut for its Aptamil products). [REDACTED]

² [REDACTED]



[REDACTED]

- c. The IF market has also seen **significant recent entry and expansion**, with both Kendamil and Mamia (Aldi’s own label formula) establishing an important market presence within the last 10 years. Kendamil, in particular, has rapidly gained market share since being launched in 2016, recently becoming the second largest manufacturer of IF in the UK, with [REDACTED]³ [REDACTED]

⁴ [REDACTED]

- d. The **key routes to market for manufacturers of IF are open and contestable**. In the UK, the most significant sales channel is the retail channel (mainly the major grocery chains). NHS hospitals (via competitive tenders) represent another strategic channel. This means that Danone UK’s main sales channels for IF are controlled by large and expert purchasers with significant buyer power. Recent market history shows that this buyer power is readily exercised in practice, and that both retailers and the NHS play a key role in facilitating entry and expansion.

10. These key features of the IF market in the UK – *i.e.*, the entry of new manufacturers, the introduction of new products and formulations, extensive investment in innovation-led quality improvements, increased product ranges, and real price reductions – are all widely-recognised indicators that competition is working well.

IF is not a typical “groceries market”; it is a consumer healthcare product.

11. Understandably, **parents research and carefully consider**, sometimes with the support of trusted healthcare professionals, what is **the most suitable nutritional solution for their baby**. When formula feeding (whether combined with breastfeeding or not) and a specific product has been selected, parents and caregivers do not often switch or “multi-source” (*i.e.*, use multiple formula products at once), unless in situations where their baby requires a different formula composition or type. Most switching tends to be driven by perceived or actual health reasons or the baby’s acceptance of a given product. Moreover, while switching is generally low compared to “typical” grocery products, Danone UK observes an increasing trend of switching between IF products.
12. **IF products are used for a relatively short period**, therefore further limiting the opportunities for switching (as compared to “typical” grocery products) that might exist in markets where parents and caregivers buy products over a longer period. Further, the fact that the product is used for a finite period means that **the consumer base is always changing** – approximately 10% of the IF consumer base needs to be recruited afresh each month⁵ – meaning that manufacturers

³ [REDACTED]

⁴ [REDACTED]

⁵ Estimate based on an average use length for IF of approximately 37 weeks.



continually must compete to earn new consumers who choose to use IF, as other consumers exit. For this reason, the fact that many parents or caregivers tend not to switch the product that they use (once chosen) for a given child is of limited relevance to assessing how competition works within the supply of IF.

13. From a manufacturer's perspective, IF is a very different product to other grocery products – especially those that were part of the CMA's report of November 2023 (which included mayonnaise and baked beans). IF products are consumed by infants at a critical stage of their development, and often as their sole source of nutrition or, alternatively, in combination with breastfeeding.
14. This means that enhanced **product quality and safety standards** must be applied. Danone follows the strictest quality and safety standards for its baby formula products. This is reflected in Danone's IF supply chain, with significant resources devoted to the production, monitoring, testing and distribution of its products. For example, at its own manufacturing sites, Danone conducts **at least ten times more pathogens testing for its baby formula products** than is required for its 'regular' food products. **Danone's own internal standards are also higher than the regulatory requirements in Europe – for example, in relation to the scope of testing for pesticides and contaminants.**
15. This commitment to quality and safety is a key part of the trusted offering that Danone UK seeks to provide to parents and carers, not just because Danone UK believes that such a stringent approach is paramount when dealing with infants, but also because the history of the global IF market shows that the consequences of any significant quality or safety failing could be highly detrimental to the health of a vulnerable consumer group.

Price is only one consideration that parents and caregivers take into account when selecting IF products.

16. As the CMA notes in its ITC, "*consumers who have chosen to, or want to use infant formula will naturally want to make the very best choice possible for their infant.*"⁶ Indeed, Danone's own research shows that this is a market in which consumers' purchasing decisions are driven by both product quality and price.
17. Reflecting the diverse nutritional needs of babies and the different drivers of parents and caregivers' decision-making, manufacturers compete in different ways. In particular, while all IF products must meet certain minimum regulatory standards related to product composition, the CMA's position – that products are "*compositionally very similar*" – fails to reflect important differences in quality, innovation and benefits offered amongst products sold in the UK.
18. For its part, Danone UK seeks to earn the trust of parents and caregivers by offering a wide choice of differentiated products that surpass those minimum compositional regulatory requirements, and provide various additional benefits.
19. In keeping with this strategy, Danone UK has made considerable and prolonged investments in quality, safety and R&D, enabling it to bring innovative, scientifically proven products to market via its Cow & Gate and Aptamil brands to address needs and demands of babies as well as their parents and caregivers. For example, such pioneering R&D activities led to

⁶ CMA ITC, para.49.



Danone being able to offer long chain polyunsaturated fatty acids in its formula product over 20 years before relevant regulations were updated to require them as a minimum regulatory standard. Danone was also the first to launch an IF containing prebiotics and pioneered prebiotic formulas based on its mixture of prebiotic GOS:FOS, in an evidence-based 9:1 ratio. This innovation has since been followed by other competitors, although at lower levels.

20. Over time and as patents expire, many of the products and formulations launched by Danone UK under its Cow & Gate and Aptamil brands as a result of these cutting-edge R&D efforts have subsequently been imitated by competitors – often at a lower price, given that Danone UK has already borne the R&D costs.

The UK Government has taken a conscious public policy decision that limits the tools available to manufacturers and retailers to compete in this market.

21. The advertising and promotion of IF is highly regulated to avoid discouraging breastfeeding and to promote infant health. Danone UK strongly supports the position that breastfeeding is best, encouraging parents to consider breastfeeding as the best option for health and nutrition, and complies with these regulations and Danone’s global policy on marketing of baby formulas.
22. While these restrictions serve an important policy objective, it is important to take into account their effect (in common with the trade-offs raised by many public policy interventions) when assessing market indicators and outcomes. In particular, many of the tools available to manufacturers of consumer products to enter a market and/or grow sales (such as promotional discounts, in-store communications, direct-to-consumer marketing campaigns or the ability to explain differentiation between products) are not available to manufacturers of IF nor to retailers. This does not mean that manufacturers compete “less”, but rather that their competitive efforts manifest themselves in the other ways described above, such as innovation, quality and choice, whilst having to remain compliant with the constraints that have been imposed by regulation.

In keeping with the position that competition is working well, Danone UK’s real prices and profit margins for IF and FOF have been falling.

23. Danone UK’s costs have risen significantly in recent years. Prices for many key inputs (such as packaging and raw materials) have risen by 50-100% in some cases. Danone UK has sought to minimise and absorb these cost increases to the greatest extent possible.
24. The CMA’s report of November 2023 materially overestimates Danone UK’s profit margins. The CMA’s headline findings, which are largely drawn from industry-wide data for 2021 and 2022, are based on a misleading “snapshot” in time that obscures the broader trends apparent in Danone UK’s sales and financial data [REDACTED]



25. Danone UK's prices are constrained by competitive pressure – as evidenced by its efforts to absorb and mitigate the increased costs it faced from 2020 onwards, wholesale price cuts recently implemented to respond to the increased importance that parents and caregivers place on both pricing and product quality standards, and the introduction of more cost-efficient, larger volume packaging formats in the wake of the cost-of-living crisis.
26. Danone UK's profit margins on baby formula [REDACTED] are commensurate with the level of investment it makes into product R&D, safety and quality, as well as the extensive risks incumbent in the supply of IF – given the potentially catastrophic consequences of any issues relating to the quality or safety of the product.

In the next stages of its assessment, it will be critical for the CMA to fully take into account the unique features of the IF market in the UK.

27. The supply of IF is very different to typical groceries markets and share a number of similar features with consumer healthcare products. It is therefore critical that the CMA's analysis of how competition is working is informed by a sufficient understanding of the nature of consumer behaviour and the way in which manufacturers compete with each other, within the specific context of the regulatory framework set by the UK Government.
28. For the reasons explained above, some of the indicators that the CMA might expect to see in other, more standard groceries markets (such as higher levels of consumer switching, significant promotional and advertising activity, or other proactive consumer acquisition strategies) are – for good reason – not present. The most relevant and recent indicators show, however, that the IF market is competitive, with strong rivalry among manufacturers on price, product quality and innovation to address the specific demands of babies, parents and caregivers.