

# INFANT FORMULA AND FOLLOW-ON FORMULA MARKET STUDY

Interim report

8 November 2024

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The Competition and Markets Authority has excluded from this published version of the final report information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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# 1. The CMA's work in the groceries sector – helping to contain cost of living pressures

## High level findings in the wider groceries sector

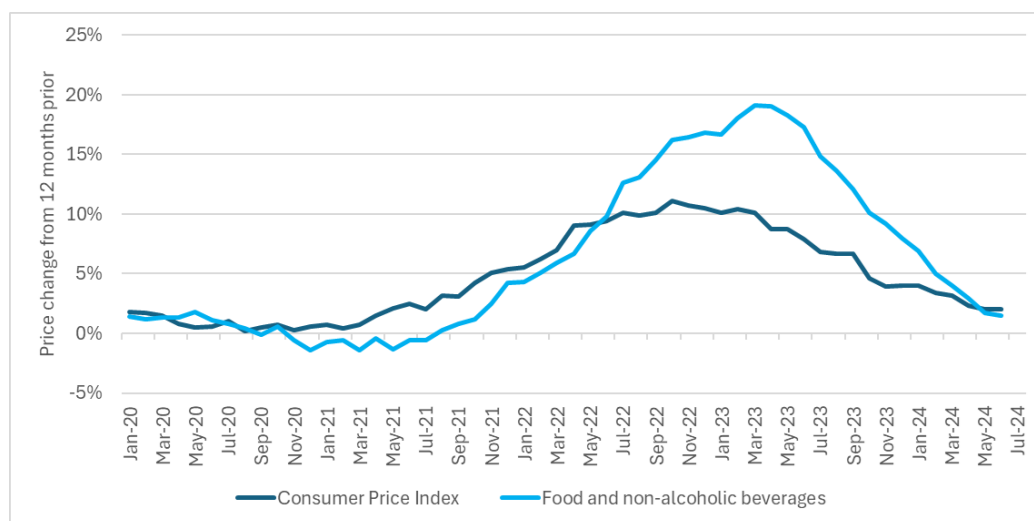
- 1.1 Being able to access affordable food and other groceries goes to the heart of why competition really matters to people's daily lives, particularly for the most vulnerable in society. Given our determination to focus on areas where people spend the most time and money, and on those who need the most help, the CMA has been investigating fairness and competition in the groceries sector, in the context of cost of living pressures and food price inflation.
- 1.2 In our review of the groceries sector last year,<sup>1</sup> we did not find widespread evidence of weak competition: profit margins were historically low; consumers were switching to get the best deals; and the lowest-price retailers were gaining market share from others. Nonetheless, we committed to have another look at this, and monitor margins as costs came down.
- 1.3 We provided a further update in July 2024.<sup>2</sup> Overall, this did not find evidence that groceries inflation is being driven at an aggregate level by weak competition between retailers.
- 1.4 At the time of our July 2023 report, the price of food and some other groceries in the UK had risen sharply in the period since the COVID-19 pandemic, and this was adding pressure on household finances that were also being stretched by rising energy, road fuel, and housing costs.
- 1.5 We noted in our July 2024 update that aggregate food price inflation has since fallen consistently, from a high of 19.1% in March 2023 to 1.5% in June 2024 (Figure 1.1). However, the level of food prices remains substantially elevated relative to average earnings, meaning that the average person would now be paying out a higher proportion of their income for the same basket of groceries.

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<sup>1</sup> CMA (2023): [Competition, choice and rising prices in groceries - GOV.UK](#)

<sup>2</sup> CMA (2024): [Cost of living update](#) and (CMA 2024): [Competition and profitability in the groceries sector - GOV.UK](#)

**Figure 1.1: Consumer Price Index and Food and Non-Alcoholic Beverage 12-month inflation rate, January 2020 to June 2024**



Source: Office for National Statistics (Consumer Price Index [All items](#) and Consumer Price Index [Food and non-alcoholic beverages](#))

## Why we came to focus on infant formula and follow-on formula

- 1.6 In contrast to the wider findings of our groceries review, and as set out in our November 2023 report,<sup>3</sup> we found signs that the market for infant formula was not delivering well for parents and carers (who we refer to collectively as parents), with significant price increases in recent years and limited own-label alternatives (unlike for most other grocery items).
- 1.7 Data from that report indicated that the average price of a pack of powdered cow’s milk based infant formula had risen by over 25% between March 2021 and April 2023. It also highlighted concerns that weak or ineffective competition in the infant formula market might be keeping prices higher than they would otherwise be. We were concerned that suppliers may face insufficient incentives to offer infant formula at competitive prices, and that consumers may not always be well equipped to make well-informed choices.
- 1.8 This product is a vital part of the weekly shop for many parents and carers across the UK. Naturally, parents want to give their babies the best possible start in life. As such, many are not focused on comparing prices when they need to make a decision to start buying formula, and once they have started with a product that seems to work well for their baby, they are reluctant to switch. It is vital that people are able to make the best choices and get good value for money when they are buying formula. Given this background, we launched a market study to get to the bottom of these issues.

<sup>3</sup> CMA (2023): [Price inflation and competition in food and grocery manufacturing and supply](#) - GOV.UK

## 2. Our approach to the market study

### Scope and focus of the market study

- 2.1 In our [invitation to comment](#) dated 20 February 2024, we said we would focus on 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>4</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>5</sup> This includes, for example, certain ‘anti-reflux’ and ‘comfort’ formulas.
- 2.2 Our primary focus is on infant formula due to its essential, non-substitutable nature for the first six months of a baby’s life. Infant formula is the only alternative to breast milk that can satisfy, by itself, the nutritional requirements of healthy babies during this period. The difficulty of starting (or re-starting) breastfeeding once a mother’s milk supply has ceased underscores the importance of this product.
- 2.3 Follow-on formula is included in our study, as after the introduction of complementary feeding, typically from six months, parents can continue with infant formula or switch to follow-on formula. Follow-on formula is a substitute for infant formula for babies aged six to twelve months. It is subject to distinct marketing regulations, potentially impacting the infant formula market’s operation.
- 2.4 Formulas labelled by manufacturers as ‘foods for special medical purposes’ (FSMP) that meet the nutritional needs of babies from birth are included within the scope of the market study. These products are generally sold alongside infant and follow-on formula, and share similar packaging despite differing regulatory standards.<sup>6</sup>
- 2.5 For ease of reference in the remainder of this report, we refer to ‘anti-reflux’, ‘comfort’, and ‘hungry baby’ formula products as ‘special milks’.<sup>7</sup> Note that our use

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<sup>4</sup> [Commission Delegated Regulation \(EU\) 2016/127](#) (Assimilated direct legislation).

<sup>5</sup> [Commission Delegated Regulation \(EU\) 2016/128](#) (Assimilated direct legislation).

<sup>6</sup> We have included FSMP products to the extent they are available to purchase without a prescription. Note that some FSMP products are also available on prescription.

<sup>7</sup> We have not specifically analysed other product types, for example goat’s milk formula, lactose-free formula, or hypoallergenic formula, since we understand (from retailer data submitted to us) that these have very low levels of sales and are not widely available across the major brands.



of the term 'special milks' (purely for convenience in this report) is distinct from the term FSMP, though there may be some overlap depending on if/how manufacturers designate their products as FSMP.

- 2.6 Growing-up milks marketed for children over twelve months, also known as toddler milks or 'stage 3' and 'stage 4' milks are also included in the scope of the market study, but only to the extent that they impact competition in the infant and follow-on formula markets.
- 2.7 Formulas available only on prescription for babies aged from birth to twelve months are excluded from this study.
- 2.8 Finally, we do not take a view on public health policy objectives that relate to this market, as this is a matter for governments. We want our final recommendations to drive better outcomes for parents, without compromising the compositional standards and safety of infant formula and follow-on formula or undermining governments' wider policy objectives for this market, including not discouraging breastfeeding.
- 2.9 In response to our invitation to comment, we received calls to widen the scope of the market study. The two main issues we were asked to consider were: including formulas available only on prescription and adjacent products such as baby snacks, probiotics, and a substitute product (donor milk). Having carefully considered all the representations we received on these matters, we decided not to expand the scope of the study because:
- With regards to the proposed inclusion of formula milk available only on prescription, the issues raised primarily related to the reasons for prescribing formula milk and it would not be appropriate for the CMA to comment on formula use following expert medical advice.
  - The adjacent and substitute products proposed for inclusion are quite different from the products in the original proposed scope of the market study, and the issues raised regarding the potential for these products to cross-promote infant formula are already being examined within the existing scope of the market study.
- 2.10 One respondent also called for the CMA to look at the safety of products, but this is outside of the CMA's remit.

## **How we gathered evidence**

- 2.11 During this market study we have gathered information from a wide range of sources to develop our understanding of the infant formula and follow-on formula market. Our information gathering activities included the following:

- We issued an invitation to comment when we launched the market study and received 11 responses to this, which are published on our website.
- We have engaged with the UK, Northern Ireland, Scottish and Welsh governments, including in the context of the Nutrition Labelling Composition and Standards (NLCS) Group.<sup>8</sup>
- We have engaged with Trading Standards Services responsible for enforcing the relevant regulations and the Advertising Standards Authority.
- We issued detailed compulsory information requests to, and received responses from, the five largest infant formula manufacturers and 13 retailers.
- We met with a range of parties involved in or with an interest in the sector, including: manufacturers, retailers, consumer groups, governments, the NHS, healthcare bodies, industry bodies, industry experts/academics, national competition authorities, international bodies including UNICEF and the World Health Organisation, and potential new entrants.
- We commissioned consumer research, which was awarded to the independent research company, Thinks Insight and Strategy. This is published alongside this report.
- We obtained and analysed research commissioned or held by manufacturers and stakeholders.
- We conducted an extensive literature review to better understand the issues with the market.

2.12 We will continue to gather and assess evidence and engage closely with governments and other stakeholders as we develop our final report.

## Market investigation reference decision

2.13 Within six months after the launch of a market study, the CMA has a legal obligation to decide whether or not to consult on a market investigation reference. We announced our decision not to make a market investigation reference at this stage<sup>9</sup> on 16 August 2024. As set out in the update<sup>10</sup> that we published alongside

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<sup>8</sup> While nutrition law is an area of devolved competency in the UK, and responsibility for overseeing and enforcing the infant formula and follow-on formula regulations sits with each of the UK's devolved nations, the UK, Northern Ireland, Scottish and Welsh Governments cooperate in relation to nutrition related labelling, composition and standards under a [draft common framework](#). The framework notes that it will enable the functioning of the UK Internal Market, while acknowledging policy divergence. The statement notes that while local enforcement is devolved and therefore out of scope... all parties agree that a level of commonality is beneficial, particularly for those businesses who operate across UK borders.

<sup>9</sup> CMA (2024): [Notice of decision not to make a market investigation reference](#)

<sup>10</sup> CMA (2024): [August 2024 update](#)

that decision, based on the evidence reviewed to date, the CMA has identified significant concerns that the combined effect of the current regulatory framework, the behaviour of manufacturers and suppliers, and the needs and reactions of people buying formula, are resulting in poor market outcomes. The CMA considered that these concerns would be best addressed by progressing with the market study and developing recommendations to governments to improve market outcomes, rather than moving to a more extensive market investigation. The August update briefly summarises the CMA's concerns to date and explains the decision not to make a market investigation reference at that point.

## **Interim report**

- 2.14 This interim report sets out our emerging concerns and possible options for governments and other stakeholders to consider to drive better outcomes for parents and carers. Parties with an interest in the market study have not had the opportunity to comment on the interim report prior to publication. We are inviting views from all interested parties on the interim report, including possible options to drive better outcomes by **29 November 2024**.

## **Next steps**

- 2.15 The CMA will consider the feedback we receive after publishing the interim report, before preparing a final market study report which we will publish by the statutory deadline of 19 February 2025.

## 3. Market overview

### Introduction

3.1 This section provides an overview of the infant formula market. It covers:

- (a) The products we have been considering as part of the market study
- (b) The regulatory and policy framework
- (c) Market structure and market participants
- (d) Other key stakeholders.

### The products

3.2 Infant formula is an essential product for many families across the UK. While not discouraging breastfeeding is a public health priority for UK governments, and as we discuss below there are regulations in place to support this policy objective,<sup>11</sup> there can 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. Infant formula is designed for use in the first months of life and is the only substitute for breast milk which can satisfy, by itself, the nutritional requirements of healthy babies until appropriate complementary feeding is introduced.<sup>12</sup> It is sold in various formats (powder, ready-to-feed (ie liquid), and tabs), and in different package sizes.

3.3 The NHS provides information on types of formula milks including to indicate suitability for infants of various ages.<sup>13</sup> Formula milks are typically classified by stage, according to product suitability for babies and toddlers of different ages:

- (a) Infant formula, also called first infant formula/milk and given the number 1 on packaging, describes a food suitable for infants from birth to 12 months and satisfying by itself the nutritional requirements of such infants until the introduction of appropriate complementary feeding. Infant formula based on modified cow's milk is the most commonly marketed infant formula, though it can also be made from goat's milk, soya, or hydrolysed proteins.<sup>14</sup>
- (b) Follow-on formula, given the number 2 on packaging, is suitable for use as the principal liquid element in the diet of infants during the period when

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<sup>11</sup> See, for example, [Public Health England guidance](#).

<sup>12</sup> DHSC (updated April 2024): [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#).

<sup>13</sup> NHS, Types of formula, [Types of formula - NHS, accessed 17/10/24](#).

<sup>14</sup> Hydrolysed protein formulas (or hypoallergenic formulas) are intended for babies experiencing digestive issues or cow's milk protein intolerance. Through the process of hydrolysis, the proteins present are broken down into smaller fragments called peptides.

appropriate complementary feeding is introduced (ie between 6 and 12 months).<sup>15</sup> NHS guidance states that: ‘Research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to have first infant formula as their main drink until they are 1 year old.’<sup>16</sup>

- (c) Growing-up milk, also called toddler milk and given the numbers 3 and 4 on the packaging, is suitable for infants over the age of 12 months. NHS guidance states that: ‘Growing up and toddler milks are marketed as an alternative to whole cow’s milk for toddlers and children over 1 year old. There is no evidence to suggest that these products provide extra nutritional benefits for young children. Whole cow’s milk is a suitable choice as a main drink for your child from age 1. Semi-skimmed cow’s milk is a suitable main drink for children over 2 who are eating a balanced diet.’<sup>17</sup>

3.4 As noted in Section 2 Our approach to the market study, infant formula and follow-on formula are included in the scope of this market study. Growing-up milks are included only to the extent that they impact competition in the infant and follow-on formula markets.

## Regulatory and policy framework

3.5 Infant formula and follow-on formula products are highly regulated in the UK and the EU.

3.6 The Department of Health and Social Care (DHSC) has stated that the regulations for infant formula and follow-on formula in the UK are designed to: ensure that infant formula and follow-on formula products provide essential nutrients for infants and are safe; provide accurate labelling to inform consumer choice and minimise the risk of consumers being misled, and ensure marketing and advertising does not discourage breastfeeding. DHSC also explained that the regulatory framework allows for growing scientific understanding and development.

3.7 DHSC’s role and that of other competent authorities in the UK is described below. Enforcement of the regulations is primarily carried out by local authorities.<sup>18</sup>

3.8 Further detail on the regulatory framework is set out in Appendix A Regulatory and policy framework.

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<sup>15</sup> Follow-on formula should not be fed to a baby under 6 months old.

<sup>16</sup> NHS, Types of formula, [Types of formula - NHS, accessed 17/10/24](#).

<sup>17</sup> NHS, Types of formula, [Types of formula - NHS, accessed 17/10/24](#).

<sup>18</sup> Additionally, the ASA enforces the CAP and BCAP Code which have provisions relating to the promotion and marketing of infant formula and follow-on formula – see Section 6 Impact of the regulatory framework and regime: Compliance and enforcement for further detail.

## Regulatory responsibility

3.9 Nutrition law is an area of devolved competency in the UK, and responsibility for overseeing and enforcing the infant formula and follow-on formula regulations sits with each of the UK's devolved nations.<sup>19</sup> DHSC, the Scottish Government, and the Welsh Government are the competent authorities for the purposes of infant formula and follow-on formula regulations for each nation in Great Britain, and the Food Standards Agency in Northern Ireland is the competent authority for Northern Ireland. The four UK nations have entered into a framework which sets out arrangements for co-operation between officials in the DHSC, Food Standards Scotland, the Welsh Government, and the Food Standards Agency in Northern Ireland in relation to nutrition related labelling, composition, and standards policy (NLCS Framework).<sup>20,21</sup> DHSC explains in guidance<sup>22</sup> that the NLCS Framework seeks to ensure that any impacts of regulatory divergence on the UK internal market are limited and, in particular, emphasises that Northern Ireland continues to play a vital role in policy development for nutrition legislation in the UK.<sup>23</sup>

## Overview of regulatory framework

3.10 The principal regulation relating to the composition, labelling and marketing of infant formula and follow-on formula in the UK is Commission Delegated Regulation (EU) 2016/127 (Regulation 2016/127) (assimilated direct legislation).<sup>24</sup> Regulation 2016/127 gives effect in part to the provisions of the World Health Organization's International Code of Marketing of Breast-milk Substitutes which is an international health policy framework designed to encourage better regulation of the marketing of breast milk substitutes in order to protect and promote breastfeeding (WHO Code).<sup>25,26</sup>

3.11 Regulation 2016/127 sets out provisions relating to the following key objectives:

- (a) ensuring that all infant formula and follow-on formula products are safe and contain essential nutrients to meet the nutritional requirements of infants;

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<sup>19</sup> As set out in more detail in Appendix A Regulatory and policy framework EU legislation relating to nutrition continues to be directly applicable in Northern Ireland.

<sup>20</sup> DHSC (2020), [Nutrition Related Labelling Composition and Standards Provisional Common Framework - October 2020](#).

<sup>21</sup> In accordance with the NLCS Framework, a group has been formed of representatives from each of the four nations which meets to discuss and agree common recommendations regarding policy proposals within the scope of the NLCS Framework.

<sup>22</sup> DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#).

<sup>23</sup> DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#).

<sup>24</sup> [Commission Delegated Regulation \(EU\) 2016/127](#) (assimilated direct legislation).

<sup>25</sup> Please see Appendix A Regulatory and policy framework for further information on the WHO Code.

<sup>26</sup> Please see Appendix A Regulatory and policy framework for further information on the regulatory framework.

- (b) ensuring accurate labelling. This includes prohibiting health and nutrition claims<sup>27</sup> on infant formula products;
- (c) ensuring marketing and advertising does not discourage breastfeeding; and
- (d) ensuring informational and educational equipment or materials relating to the feeding of babies contains objective and consistent information including on the benefits and superiority of breastfeeding.

3.12 The provisions relating to marketing and advertising restrict the advertising and promotion of infant formula in order to implement certain recommendations set out in the WHO Code. The provisions include the following:

- (a) advertising of infant formula is restricted to publications specialising in baby care and scientific publications, and such advertisements can only include information that is of a scientific and factual nature;<sup>28</sup>
- (b) point-of-sale advertising, the giving of samples and other promotional devices to induce sales of infant formula directly to parents at the retail level are prohibited (for example special displays, discount coupons, loss leaders, or special sales).<sup>29</sup> DHSC has stated that this provision does not prevent infant formula manufacturers or distributors from reducing the price of infant formula. However, promotional activities around the price reduction may be seen as an inducement to purchase infant formula. Where loyalty card schemes seek to induce the sale of infant formula through rewards, incentives or price reductions they are likely to be prohibited by the regulations;
- (c) there is a requirement for infant formula and follow-on formula products to be clearly distinct from each other to avoid any risk of confusion between them and to enable consumers to make a clear distinction between them, in particular as to the text, images, and colours used.<sup>30</sup> The purpose of this provision is to ensure appropriate product use and prevent harm by feeding babies unsuitable formula. DHSC's guidance on Regulation 2016/127<sup>31</sup> states that this provision also serves to prevent cross promotion and the indirect marketing of infant formula by advertising a follow-on formula product that looks very similar;
- (d) manufacturers and distributors of infant formula must not provide free or subsidised products, samples or any other promotional gifts to members of

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<sup>27</sup> Health claims and nutrition claims are defined in [Regulation \(EC\) 1924/2006](#) which also sets out conditions for the use of such claims and mandates that the appropriate health authority (being DHSC) shall maintain a register of approved health and nutrition claims. Please see Appendix A Regulatory and policy framework for further information.

<sup>28</sup> [Commission Delegated Regulation 2016/127](#), Article 10(1).

<sup>29</sup> [Commission Delegated Regulation 2016/127](#), Article 10(2).

<sup>30</sup> [Commission Delegated Regulation 2016/127](#), Article 6(6).

<sup>31</sup> [DHSC \(2013\), Guidance on Regulation 2016/127](#).

the general public including pregnant women, mothers or members of their families directly or via the healthcare system or health workers. This includes free or low-priced products, samples or any other promotional gifts;<sup>32</sup> and

- (e) 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 babies who have to be fed on infant formula and only for as long as required by such babies.<sup>33</sup>

## **Role of government and public bodies**

### **DHSC**

#### *Compliance role*

- 3.13 When manufacturers place infant formula, specific follow-on formulas, and FSMP products on the market in Great Britain they must notify the competent authority and send a copy of the label to be included on the product packaging, along with any further information the competent authority reasonably requests to establish compliance with Regulation 2016/127. DHSC is the competent authority for England and also co-ordinates the notification process on behalf of Scotland and Wales. In Northern Ireland, manufacturers make notifications to the Food Standards Agency Northern Ireland. Through the arrangements of the NLCS Framework, information on notifications is shared between the nations of the UK.
- 3.14 If DHSC considers that, based on the information provided, the label may not comply with Regulation 2016/127 it will notify the manufacturer of its concern and request that the manufacturer amends and resubmits the labelling. Once DHSC receives an amended label it provides a letter of acknowledgement which confirms completion of the notification process. This is not confirmation of compliance with the regulations. Where there may be any difference in views between DHSC and a manufacturer, DHSC may issue an amended acknowledgement letter that highlights its concerns. Acknowledgement letters are shared with enforcement authorities, including where DHSC has raised concerns. DHSC guidance explains that it is the responsibility of individual businesses to ensure their compliance with the law and Regulation 2016/127 states that infant formula and follow-on formula products may only be placed on the market if they comply with this Regulation.<sup>34</sup>

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<sup>32</sup> [Commission Delegated Regulation 2016/127](#), Article 10(3).

<sup>33</sup> [Commission Delegated Regulation 2016/127](#), Article 10(4).

<sup>34</sup> [DHSC \(2013\), Guidance on Regulation 2016/127](#).



## *Guidance*

- 3.15 DHSC has produced guidance on Regulation 2016/127<sup>35</sup> which is designed to support manufacturers by providing information and advice and to set out DHSC's interpretation of the regulation as well as to support local authorities responsible for enforcing legislation in this area. Where this guidance is relevant to our market study we make reference to it in this interim report.

## *Updating the Regulations*

- 3.16 The regulations may be updated where appropriate. For example, DHSC told us that over many years, the composition of infant formula has evolved due to advances in scientific evidence, with legislation on compositional standards updated to reflect this, which has led to better outcomes for infants. In 2006, for instance, the European Commission adopted a new Directive on infant formula and follow-on formula (Commission Directive 2006/141/EC) which updated the 1991 legislation to reflect updated recommendations from the European Scientific Committee for Food (SCF) based on the latest scientific developments and discussions at an international level in the Codex Alimentarium forum.
- 3.17 Following the UK's exit from the European Union, updates to Commission Delegated Regulation (EU) 2016/127 (assimilated direct legislation), affecting England, Scotland and Wales, have become a matter of UK law. In many cases, updates can be made through secondary legislation,<sup>36</sup> preceded by a public consultation.<sup>37</sup> In circumstances where there is not a power to amend Regulation 2016/2017 by secondary legislation, this may be done by primary legislation.

## **Enforcement of Regulation 2016/127**

- 3.18 Legislation relating to infant formula and follow-on formula is enforced separately in each of the nations of the UK. In each case, the enforcement regulations state that a 'food authority' is responsible for enforcing the regulation (usually, the responsibility for enforcement will be given to local trading standards services or environmental health departments at local councils). In enforcing Regulation 2016/127, local authorities in England have a range of interventions at their disposal: enforcement may start with a discussion with a 'food business operator' (which we understand would be typically a manufacturer) about a potential breach and, where necessary, escalated to issuing an improvement notice requiring the food business operator to take action to become compliant with the potential for

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<sup>35</sup> DHSC (2013), [Guidance on Regulation 2016/127](#).

<sup>36</sup> For example, Articles 11 and 16A of [Regulation \(EU\) No 609/2013](#), or section 15 of the [Retained EU Law \(Revocation and Reform\) Act 2023](#).

<sup>37</sup> [Regulation \(EC\) No 178/2002](#), Article 9 which lays down the general principles and requirements of food law states that 'there shall be open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it'.

court action (and a fine on summary conviction<sup>38</sup>) if the food business operator fails to take the necessary action.

## ASA

- 3.19 The Advertising Standards Agency (ASA) regulates advertising across all media in the UK including advertisers' own marketing communications on their own websites and advertising on social networking sites.
- 3.20 The ASA administers and enforces the CAP Code<sup>39</sup> in relation to non-broadcast advertising and the BCAP Code<sup>40</sup> in relation to broadcast advertising. The CAP and BCAP Codes include specific provisions on infant formula and follow-on formula which reflect Regulation 2016/127. The ASA advises marketers to have regard to this regulation and other relevant food law when preparing marketing communications and adverts. The CAP and BCAP Codes state that marketing communications/adverts for infant formula are not permitted<sup>41</sup> and that marketing communications/adverts must not confuse consumers between infant formula and follow-on formula.<sup>42</sup> There are also provisions in each code restricting the use of health and nutrition claims. As such, whilst the ASA does not enforce Regulation 2016/127, its enforcement of the CAP and BCAP Codes still impacts how infant formula and follow-on formula products are marketed in the UK.
- 3.21 The ASA will review complaints it receives and, if there is merit to the complaint, may issue an informal advice notice to the marketer in the first instance. There may also be instances where the marketer admits a breach and agrees to take remedial action. If a marketer ignores an advice notice or does not take adequate remedial action the ASA may decide to formally investigate and adjudicate on the possible breach of the CAP Code or BCAP Code. In this case, the ASA publishes its ruling and, if it finds there is a breach of the CAP or BCAP Code, requires the marketer to remove its advert.

## Market structure and market participants

### Manufacturers

- 3.22 Manufacturers are the upstream suppliers of formula milk. There are both manufacturers that supply their own branded products (such as Danone with its

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<sup>38</sup> [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, paragraph 4\(3\).](#)

<sup>39</sup> ASA (2014) – The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) [CAP Code, Edition 12](#).

<sup>40</sup> ASA (2010) – The UK Code of Broadcast Advertising (BCAP Code) [BCAP Code](#).

<sup>41</sup> ASA – CAP Code, Rule 15.10 [CAP Code](#) and ASA – BCAP Code, Rule 13.8 - [BCAP Code](#).

<sup>42</sup> ASA – CAP Code, Rule 15.10.1 [CAP Code](#) and ASA – BCAP Code, Rule 13.8.1 - [BCAP Code](#).

Aptamil and Cow & Gate brands) and contract manufacturers that supply products sold in the UK.<sup>43</sup>

- 3.23 The five largest manufacturers that supply within the UK, and the brands (and sub-brands) that they supply, are:
- (a) Danone: Aptamil (Aptamil and Aptamil Advanced) and Cow & Gate
  - (b) Kendal Nutricare (Kendal):<sup>44</sup> Kendamil
  - (c) Nestle: SMA (SMA and SMA Advanced) and Little Steps
  - (d) HiPP: HiPP Organic
  - (e) A contract manufacturer [redacted].
- 3.24 Manufacturers distribute their products in the UK through several different channels. These include major grocery retailers, large discounters,<sup>45</sup> other grocery retailers, large pharmacy chains, independent pharmacies, online-only pharmacies, other online-only retailers, wholesalers, and NHS Trusts. Some manufacturers also sell direct-to-consumer through their websites.
- 3.25 At firm level, we are aware of five examples of entry in the supply of formula milks in the UK within the past ten years, of which three remain in the market currently (see more in Section 4 Market outcomes: Shares of supply and Section 7 Competition in the market: Barriers to entry and expansion).<sup>46</sup>
- 3.26 At brand level, we are aware of a few examples in the past decade of existing manufacturers introducing new brands; for example, Nestle introduced both Little Steps and SMA Advanced in 2019.<sup>47</sup> Manufacturers also sometimes re-formulate, re-brand, or offer new formats for certain product ranges within their portfolio,<sup>48</sup> and also sometimes cease supply of certain product ranges.<sup>49</sup>

## Retailers

- 3.27 Retailers include major grocery retailers, large discounters, other grocery retailers, large pharmacy chains, independent pharmacies, online-only pharmacies, and other online-only retailers. These retailers combined represent by far the largest

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<sup>43</sup> [redacted].

<sup>44</sup> [redacted].

<sup>45</sup> For the purposes of this report, this refers to Aldi, Iceland, and Lidl.

<sup>46</sup> The most recent is Lidl's own-label Lupilu infant formula and follow-on formula where sales commenced in August 2024. We indicate throughout this report where Lupilu has or has not been considered in our analysis.

<sup>47</sup> SMA, [About Us | Who We Are As a Brand | SMA Baby](#), accessed 17/10/24.

<sup>48</sup> For example, Danone launched Aptamil in the format of pre-measured tabs in 2021. [Danone launches UK's 1st formula milk in an innovative, pre-measured tab format](#), accessed 17/10/24. Nestle refreshed its packaging design on its entire formula range in 2018. [About Us | Who We Are As a Brand | SMA Baby](#), accessed 17/10/24.

<sup>49</sup> For example, Danone de-listed its Aptamil Organic infant formula range in 2023.

sales channel for manufacturers, representing [80-90%] of manufacturers' aggregate revenues in 2023.<sup>50</sup>

3.28 We requested from thirteen of the largest retailers data for the infant formula and follow-on formula products they supply in the UK.<sup>51</sup> Of these, Asda, Boots, Morrisons, Sainsbury's, and Tesco are the five largest retailers of formula milks in the UK, accounting for a combined [60-70%] of manufacturers' total revenues for infant formula in 2023.<sup>52</sup>

## **NHS supply**

3.29 Supply to the NHS is another sales channel. Most NHS Trusts will stock some infant formula in case parents need it (often unexpectedly) after giving birth. Procurement for NHS Trusts (in England & Wales)<sup>53</sup> occurs through the NHS Supply Chain framework – see Section 7 Competition in the market: Barriers to entry and expansion for further detail on this.

## **Other key stakeholders**

### **Healthcare practitioners**

3.30 Healthcare practitioners are stakeholders in this market given their role in relation to infant feeding. For example, guidance for NHS England recommends that parents speak to a midwife, health visitor or GP for advice or concerns regarding formula milk.<sup>54</sup>

3.31 Representative bodies of healthcare practitioners similarly have an interest in infant feeding. These groups include the Institute of Health Visiting, the Nursing and Midwifery Council, the Royal College of Midwives, the Royal College of Nursing, and the British Nutrition Association.

### **NGOs/nutrition groups**

3.32 There is a range of wider groups with an interest in infant feeding. These include:

- Charities such as the British Pregnancy Advisory Service (BPAS), Feed, and First Steps Nutrition Trust (FSNT)

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<sup>50</sup> Aggregate revenues of grocery retailers, discounters, pharmacies, and online-only retailers, comprising infant formula, follow-on formula, growing-up milks, and special milks.

<sup>51</sup> We requested data from the following thirteen retailers: Aldi, Amazon, Asda, Boots, Coop, Iceland, Lidl, Morrisons, Ocado, Sainsburys, Superdrug, Tesco, and Waitrose. Our analysis does not include independent groceries and pharmacies, or discounters and wholesalers (such as Costco).

<sup>52</sup> CMA analysis based on manufacturers' 2023 sales channels data. The same top five retailers are consistent across all product categories of formula milks.

<sup>53</sup> There are different arrangements for procurement in Scotland and Northern Ireland.

<sup>54</sup> NHS England, [Types of formula](#), accessed 28/08/24.

- Non-governmental organisations such as UNICEF and WHO
- Consumer groups, including Citizens Advice, Which? and parenting forums such as Mumsnet.

## 4. Market outcomes

- 4.1 In this section we describe the outcomes we have observed in the market. We set out our provisional analysis of:
- (a) Shares of supply of formula milk products.
  - (b) Retail pricing.
  - (c) Manufacturers' and retailers' margins.
  - (d) How manufacturers seek to differentiate their products.

### Shares of supply

- 4.2 We have estimated shares of supply based on sales data requested from the five largest manufacturers (Danone, Nestle, HiPP, Kendal, a contract manufacturer [X]) for the period January 2019 through to July 2024.<sup>55,56</sup>
- 4.3 Our share of supply estimates for the infant formula product category are presented in Table 4.1 and Figure 4.1.

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<sup>55</sup> Since sales of Lidl's Lupilu infant formula and follow-on formula (manufactured by [X]) commenced in August 2024, these are not included here. We note that sales volumes to date would not materially affect the shares of supply presented here.

<sup>56</sup> Our shares of supply estimates are based on 'product-specific revenue' data, which we requested from manufacturers. By 'product-specific revenue', we mean revenue entitled to be received in exchange for each unit of product (including any refunds, discounts, volume-based rebates, price concessions, credits, incentives or similar items, provided that they are directly attributable to the exchange of a particular unit of product). Throughout the rest of this report, where we refer to 'revenue', we mean 'product-specific revenue', unless otherwise specified. Please see Appendix E Margins methodology for more details of the types of transactions which are included and how we took into account representations from some of the manufacturers.

**Table 4.1: UK shares of supply, based on revenues, for infant formula**

Manufacturer	Brand	2019	2020	2021	2022	2023	2024 YTD
Danone	Aptamil	✂	✂	✂	✂	✂	✂
		[40-50%]	[40-50%]	[40-50%]	[40-50%]	[30-40%]	[30-40%]
	Cow & Gate	✂	✂	✂	✂	✂	✂
		[20-30%]	[20-30%]	[20-30%]	[20-30%]	[20-30%]	[20-30%]
Total	✂	✂	✂	✂	✂	✂	
		[70-80%]	[70-80%]	[60-70%]	[60-70%]	[60-70%]	[50-60%]
Kendal	Kendamil	✂	✂	✂	✂	✂	✂
		[0-5%]	[0-5%]	[0-5%]	[5-10%]	[10-20%]	[20-30%]
Nestle	SMA	✂	✂	✂	✂	✂	✂
		[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]
	Little Steps	✂	✂	✂	✂	✂	✂
		[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]
Total	✂	✂	✂	✂	✂	✂	
		[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]
HiPP	HiPP Organic	✂	✂	✂	✂	✂	✂
		[5-10%]	[5-10%]	[5-10%]	[5-10%]	[5-10%]	[5-10%]
Mamia contract manufacturer [✂]	Mamia (Aldi own-label)	✂	✂	✂	✂	✂	✂
		[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]
Little Ones contract manufacturer [✂]	Little Ones (Sainsbury's own-label)	✂	✂	-	-	-	-
		[0-5%]	[0-5%]				
Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: CMA's calculations based on manufacturers' sales revenue data.

Data has only been received for the first seven months of 2024.

**Figure 4.1: UK shares of supply, based on revenue, for infant formula**



Source: CMA's calculations based on manufacturers' sales revenue data.

Data has only been received for the first seven months of 2024.

4.4 The infant formula product category is highly concentrated, with the top three manufacturers (Danone, Kendal, and Nestle) accounting for [90-100%] of the share of supply by revenue in 2023 and [90-100%] in 2024 to date.

4.5 Danone is the largest manufacturer of infant formula products, with a combined revenue share across its brands (Aptamil and Cow & Gate) of [50-60%] in the first seven months of 2024, falling from [70-80%] in 2019. Aptamil's share of supply was [30-40%] in the first seven months of 2024, making it the largest infant formula brand, followed by Cow & Gate with a share of [20-30%].

- 4.6 Kendal is now the second largest manufacturer by revenue share ([20-30%]) ahead of Nestle (with its SMA and Little Steps brands), which had a revenue share of [10-20%], in the first seven months of 2024. HiPP was the fourth largest manufacturer, accounting for [0-5%] in the first seven months of 2024.
- 4.7 Most manufacturers lost market share from 2019 to 2023. Kendal's Kendamil was the only brand that materially increased its presence, from less than [0-5%] in 2019 to [20-30%] in the first seven months of 2024. Kendal overtook Nestle as the second largest manufacturer of infant formula products in 2023.
- 4.8 Own labels are scarcely present in this product category. The only established own-label is Aldi's Mamia, manufactured by [X], which accounted for [0-5%] of the revenue share of supply in the first seven months of 2024. Sainsbury's Little Ones, which was manufactured by [X], was de-listed in 2020 and had a revenue share of only [0-5%] in 2019. Lidl's own-label product entered in August 2024 (and is therefore not included in these shares of supply tables which represent the period to July 2024).
- 4.9 We have also calculated shares of supply based upon sales revenue data for follow-on formula and this has shown similar results, as seen in Table 4.2 and Figure 4.2.



Table 4.2: UK shares of supply, based on revenues, for follow-on formula

Manufacturer	Brand	2019	2020	2021	2022	2023	2024 YTD
Danone	Aptamil	✂	✂	✂	✂	✂	✂
		[40-50%]	[40-50%]	[40-50%]	[40-50%]	[40-50%]	[40-50%]
	Cow & Gate	✂	✂	✂	✂	✂	✂
		[20-30%]	[20-30%]	[20-30%]	[20-30%]	[20-30%]	[20-30%]
Total	✂	✂	✂	✂	✂	✂	
		[70-80%]	[70-80%]	[70-80%]	[60-70%]	[60-70%]	[60-70%]
Kendal	Kendamil	✂	✂	✂	✂	✂	✂
		[0-5%]	[0-5%]	[0-5%]	[5-10%]	[10-20%]	[10-20%]
Nestle	SMA	✂	✂	✂	✂	✂	✂
		[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]
	Little Steps	✂	✂	✂	✂	✂	✂
		[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]	[0-5%]
Total	✂	✂	✂	✂	✂	✂	
		[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]	[10-20%]
HiPP	HiPP Organic	✂	✂	✂	✂	✂	✂
		[5-10%]	[5-10%]	[5-10%]	[5-10%]	[5-10%]	[5-10%]
Mamia contract manufacturer [✂]	Mamia (Aldi own-label)	✂	✂	✂	✂	-	-
		[0-5%]	[0-5%]	[0-5%]	[0-5%]		
Little Ones contract manufacturer [✂]	Little Ones (Sainsbury's own-label)	✂	✂	-	-	-	-
		[0-5%]	[0-5%]				
Total		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: CMA's calculations based on manufacturers' sales revenue data.  
Data has only been received for the first seven months of 2024.

Figure 4.2: UK share of supply, based on revenue, for follow-on formula



Source: CMA's calculations based on manufacturers' sales revenue data.  
Data has only been received for the first seven months of 2024.

- 4.10 The follow-on formula product category is also highly concentrated, with Danone the largest manufacturer in terms of revenue, accounting for a share of [60-70%] in the first seven months of 2024. The two largest brands are both Danone's, with Aptamil and Cow & Gate having [40-50%] and [20-30%] share of supply, respectively, in the first seven months of 2024.
- 4.11 Nestle had the second largest combined revenue share of supply with a [10-20%] share across its brands (SMA and Little Steps) in 2023. This was ahead of Kendal, which was the third largest manufacturer ([10-20%] share) in follow-on formula, followed by HiPP with a [5-10%] revenue share. Aldi's Mamia follow-on formula

product was discontinued in 2022, due [✂], previously having had a share of between [0-5%] in 2019 – 2022.<sup>57</sup> However, in the first seven months of 2024, Kendal is now the second largest manufacturer with a [10-20%] share of supply, compared to Nestle's [10-20%] share.

- 4.12 The supply of special milks (anti-reflux formula, comfort formula, and hungry baby formula) is even more concentrated, due to the only very recent entry of Kendal into comfort formula and the absence of any own-label products across all special milks. Danone is the largest manufacturer, with a larger than 80% combined revenue share in anti-reflux formula and hungry baby formula and larger than 70% share in comfort formula through the period 2021 to the first seven months of 2024. Danone's Aptamil brand was the largest brand for the anti-reflux formula and comfort formula product categories, followed by Cow & Gate. For hungry baby formula, Cow & Gate was the largest brand, followed by Aptamil. Nestle is the second largest manufacturer in these categories with revenue shares of around 10-20%. Kendal entered the comfort formula product category in 2024 and in the first seven months of 2024 had a revenue share of [10-20%]. HiPP, the only other manufacturer active in these product categories, had a range of shares between [0-10%] across the special milk product categories. HiPP is no longer present in hungry baby formula.
- 4.13 Shares of supply in growing-up milk are broadly consistent with those in infant formula and follow-on formula. The only difference was that in 2023, SMA was the third largest brand with [10-20%] share, ahead of Kendamil's [10-20%] share of supply. However, in the first seven months of 2024, Kendamil's share rose to [10-20%] and was ahead of Nestle's [10-20%] revenue share of supply. There are no own-label growing-up milk products available.
- 4.14 Our shares of supply analysis, as noted earlier in this section, is largely consistent with third party market research data reviewed by the CMA.
- 4.15 The results from retailers' data for the shares by sales revenues of infant formula, follow-on formula, special milks, and growing-up milk are consistent with the results from manufacturers' data presented in Table 4.1. For further detail see Appendix C Shares of supply methodology and additional provisional findings.

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<sup>57</sup> Lidl's own-label Lupilu follow-on formula entered in August 2024 (and is therefore not included in these shares of supply, which represent the period to July 2024).

## Retail pricing

### Our approach to the analysis

- 4.16 The CMA analysed data from the five largest UK retailers of infant formula<sup>58</sup> (Asda, Boots, Morrisons, Sainsbury's, and Tesco), as well as three discounter retailers (Aldi, Lidl, and Iceland). The data included the monthly average selling price for each formula milk product stocked by each retailer, from January 2019 to July 2024.<sup>59</sup>
- 4.17 We have focused most of our analysis on the best-selling product format: 800g powder tubs (or 900g for some brands).<sup>60</sup> These accounted for [70-80%] of manufacturers' aggregate revenues from infant formula in 2023.<sup>61</sup> We have also considered individual ready-to-feed bottles (200ml or 250ml), as these were the most purchased form of liquid infant formula, comprising [10-20%] of manufacturers' aggregate revenue from infant formula in 2023.<sup>62,63</sup>
- 4.18 We have focused on the following brands: Danone's Aptamil and Cow & Gate; Kendal's Kendamil; Nestle's SMA and Little Steps; HiPP's HiPP Organic; and Aldi's Mamia; examining separately also the sub-brands Aptamil Advanced and Kendamil Organic as their pricing differs substantially from that of Aptamil and Kendamil, respectively.<sup>64,65</sup> We have analysed prices across the five major retailers but in most of our analysis below, show a single representative price, for simplicity. In the charts and tables below, where a single price is shown, this is Tesco's price (or Aldi's price for Mamia specifically), unless otherwise specified. Tesco is the largest UK groceries retailer. Furthermore, as we discuss further below, prices do not vary substantially between the five largest retailers.

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<sup>58</sup> The CMA identified the largest retailers based on retailers' 2023 sales revenues.

<sup>59</sup> Since Lidl's Lupilu formula range was launched in August 2024, it is not included in this pricing analysis, which covers the period to July 2024.

<sup>60</sup> For each of the major brands of infant formula, the best-selling infant formula and follow-on formula products in 2023 (by revenue) were in the form of 800g or 900g powder tubs. Mamia sold 900g (rather than 800g) powder products during period. Kendamil sold both 800g and 900g powder products during period.

<sup>61</sup> CMA analysis based on manufacturers' 2023 sales revenues.

<sup>62</sup> CMA analysis based on manufacturers' 2023 sales revenues. HiPP and Kendamil sold 250ml ready-to-feed products rather than 200ml at times during this period. The price has not been pro-rated for these products, as ready-to-feed products are instructed to be used within 24hrs once opened (unlike powder products, which can be used for four weeks once opened), and are generally 'single-serving' products.

<sup>63</sup> For each of the major brands of infant formula which sold ready-to-feed products, the best-selling ready-to-feed infant formula and follow-on formula products in 2023 (by revenue) were in the form of 200ml or 250ml liquid bottles (or multipacks thereof).

<sup>64</sup> We do not show the sub-brand SMA Advanced, due to its very small market share ([0-5%] in the period 2019 to the first seven months of 2024).

<sup>65</sup> Mamia and Kendamil sold 900g (rather than 800g) powder products during period - for these products, the price has been pro-rated to show the 800g-equivalent price.

## Our findings

### Products and range

- 4.19 All of the major retailers sell infant formula products from all of the major brands, though the exact range of brands and products available in individual stores differs somewhat, depending on their size and location.<sup>66</sup> The major brands are widely available in the major retailers' larger stores, usually in both powder and ready-to-feed format, while smaller stores generally only stock certain brands, and often do not have both formats available.
- 4.20 The range at discounter stores (Aldi, Lidl, and Iceland) is substantially more limited compared to the major retailers, especially for ready-to-feed products. Aldi does not currently sell any infant formula or follow-on formula products other than its own-brand 'Mamia' infant formula powder.<sup>67</sup>

### Price trends

- 4.21 Retail prices of infant formula products rose substantially in the period from 2019 to 2023 (see Figure 4.3). For products that were available throughout this period, prices of the major brands' 800g infant formula powder products rose by 29-59%, and prices of 200ml ready-to-feed infant formula products rose by 38-57%.<sup>68</sup> For context, the UK's overall consumer price index rose by 24% over this period, and overall food prices rose by 32%.<sup>69</sup> Aptamil, the market-leading brand, saw the price of 800g infant formula powder rise from £10.85 in March 2019, to £14.60 in December 2023, an increase of £3.75 or 35%. Similarly, the price of Aptamil's 200ml ready-to-feed rose from £0.85 to £1.34, a price increase of £0.49 or 58% (Figure 4.4).<sup>70</sup> In this period, there were no significant price decreases for any of the major brands' 800g powder or 200ml ready-to-feed products. Mamia 900g powder saw two price decreases (in July 2019 and July 2020), each of less than £0.50.

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<sup>66</sup> CMA analysis of a sample of retailers' product listings at different store sizes suggests Little Steps appears to be widely available in retailers' large stores (>1,400m<sup>2</sup>), but is generally unavailable in smaller stores.

<sup>67</sup> Aldi's Mamia follow-on formula product was delisted in [§] 2022.

<sup>68</sup> CMA analysis comparing average selling prices in Tesco from March 2019 to December 2023.

Note that for the 800g infant formula product with the largest price increase (HiPP Organic), the price at Tesco was below recommended retail prices (RRP) in March 2019 ([§]); if this price had matched RRP, the top end of the range of price increases in 800g infant formula powder would have been lower.

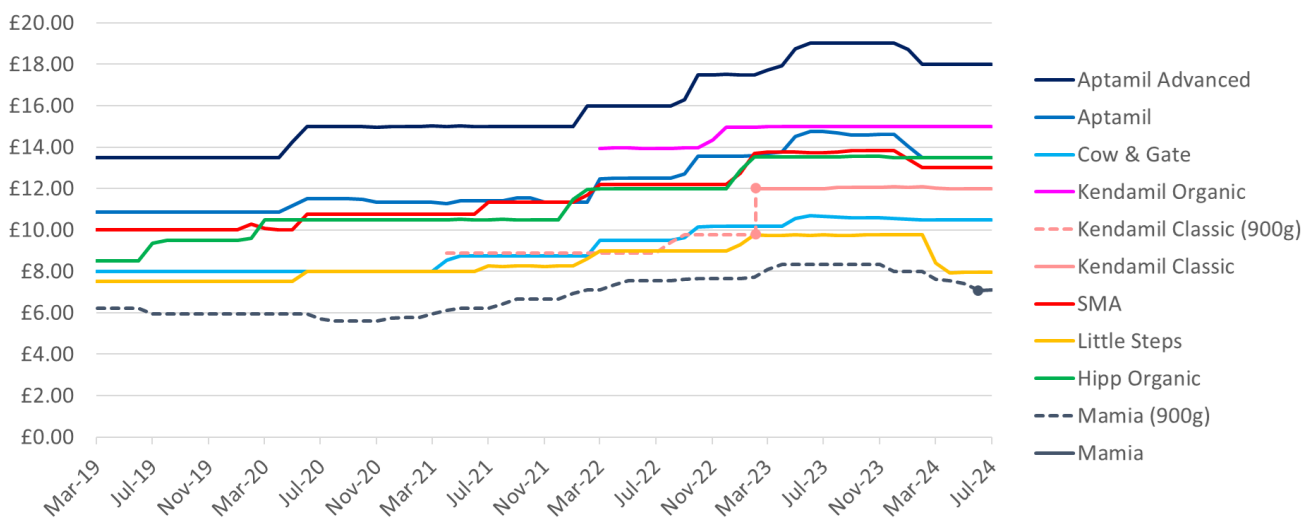
When including products which have become available in major retailers since 2019, for 800g infant formula products, the smallest price increase was for Kendamil Organic (8%, available from March 2022), and the largest remains unchanged. On the same basis for 200ml ready-to-feed infant formula products, the smallest price increase was for Little Steps (31%, available from June 2020), and the largest was for Kendamil (59%, available from March 2022).

<sup>69</sup> CMA analysis based on data from the Office for National Statistics ([Consumer Price Index 00: All Items 2015=100 14 August 2024 \(Series ID: D7BT\)](#) and [Consumer Price Index 01.1: Food 2015=100 14 August 2024 \(Series ID: D7C8\)](#)).

<sup>70</sup> Monthly average selling price data from Tesco.

- 4.22 In the period from 2019 to 2023 – during which time Kendamil’s market share was increasing significantly (as noted earlier in this section in Shares of supply) – we do not observe an obvious price response by incumbents.<sup>71</sup>
- 4.23 The most rapid increases in formula prices occurred from late 2021 to late 2023. Prices of 800g infant formula products rose by 18-36% across brands between December 2021 and December 2023.<sup>72,73</sup>
- 4.24 Since November 2023, we have seen some instances of falling retail prices of infant formula. Prices of 800g infant formula powder fell in Tesco for Aptamil Advanced, Aptamil, SMA, and Little Steps, by 5-19%,<sup>74</sup> while the price of Mamia at Aldi fell by 15% (Cow & Gate, Kendamil, Kendamil Organic, and HiPP Organic 800g products did not fall in price substantially in this time).<sup>75</sup> There have been no significant price increases for any brand’s 800g or 200ml ready-to-feed infant formula since the start of 2024.<sup>76</sup> Despite this, for most brands (with the exception of Little Steps and Mamia), prices as of July 2024 remain similar to, or above, their levels at the start of 2023.

**Figure 4.3: Monthly average retail selling price of 800g infant formula products, March 2019 to July 2024**



Source: CMA analysis based on retailers’ monthly average selling price data.

<sup>71</sup> This is our interpretation; however, it is not possible to definitively prove this, since it is possible that competitors’ prices would have risen even faster in the absence of Kendamil.

<sup>72</sup> Monthly average selling price data from Tesco.

<sup>73</sup> This mirrors the period of the more general cost-of-living crisis. Over this period, the consumer price index rose by 15%, and food prices rose by 26%. CMA analysis based on data from Office of National Statistics ([Consumer Price Index 00: All Items 2015=100 14 August 2024 \(Series ID: D7BT\)](#) and [Consumer Price Index 01.1: Food 2015=100 14 August 2024 \(Series ID: D7C8\)](#)).

<sup>74</sup> Change in average prices of the major brands’ 800g infant formula products at Tesco, from November 2023 to May 2024.

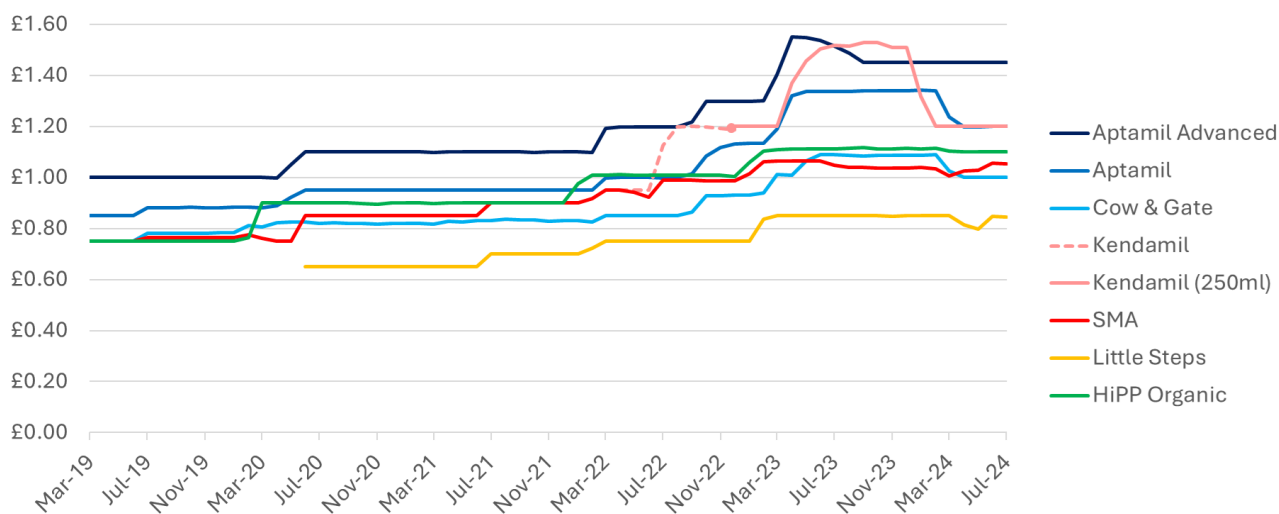
<sup>75</sup> These price changes were replicated across retailers, with the following exceptions: the price of SMA fell only at Tesco and Sainsbury’s, the price of Little Steps fell only at Tesco, Asda and Morrisons. The prices of Aptamil Advanced and Aptamil fell at all of the major retailers.

<sup>76</sup> The largest price increase in the period January to May 2024 was the price of SMA at Asda, which increased by £0.25 from £13.00 to £13.25 in January 2024; however, even after this increase, Asda’s price for SMA was still below that at two of the other largest retailers.

Price shown is that at Tesco, except for Mamia which is Aldi's price. For ease of comparison, the prices of 900g products have been pro-rated to 800g-equivalent prices.

Note that Kendamil Classic and Mamia infant formula resized from 900g to 800g in this period – the 900g product is shown (with a dotted line) until the 800g product enters the retailer.

**Figure 4.4: Monthly average retail price of 200ml ready-to-feed infant formula products, March 2019 to July 2024**



Source: CMA analysis based on retailers' monthly average selling price data.

Price shown is that at Tesco. The prices of 250ml ready-to-feed products have not been pro-rated.

Note that Kendamil Classic ready-to-feed infant formula resized from 200ml to 250ml in this period – the 200ml product is shown (with a dotted line) until the 250ml product enters Tesco.

4.25 Retail prices of follow-on formula have followed largely the same pattern as those of infant formula, albeit with more volatility arising from price promotions. The average selling price of all major brands' 800g/900g follow-on formula products rose between January 2019 and December 2023, and then fell in 2024 for several brands including Aptamil, Aptamil Advanced (except at Asda), Cow & Gate, and Little Steps (only in Tesco). In 2024, the price of Cow & Gate 800g follow-on formula fell at several retailers, despite no price falls for the corresponding infant formula product. See further detail, including charts for follow-on formula pricing, in Appendix D: Pricing analysis methodology and additional provisional findings.

### Price position of brands

4.26 There is a consistent pattern of relative pricing among infant formula brands, which is generally the same across retailers. Based on pricing of 800g infant formula powder as of July 2024, Aptamil Advanced (£18.00) is the most expensive major brand; next is Kendamil Organic (£15.00); Aptamil (£13.50); HiPP Organic (£13.50), SMA (£13.00); Kendamil (£12.00); Cow & Gate (£10.50); Little Steps (£7.95 – by far the least expensive branded product); and the least expensive product overall, Mamia (£7.10).<sup>77</sup>

<sup>77</sup> Monthly average selling prices at Tesco and Aldi, in July 2024.

- 4.27 Aptamil (produced by Danone) and SMA (produced by Nestle) each have ‘advanced’ sub-brands, priced at a premium compared to the ‘standard’ products. In July 2024 at Tesco, Aptamil Advanced cost £18.00 while Aptamil cost £13.50, thus the premium was 33% (or £4.50); this premium has risen since 2019, when it was 24% (or £2.65). For 200ml ready-to-feed products, the premium fluctuated but remained around 15% (£0.13 in 2019, £0.19 in 2024). Nestle’s SMA Advanced sub-brand has a very small market share and does not have widespread availability (it was listed only at Asda, Sainsbury’s and Boots, as of 2024).
- 4.28 Danone and Nestle also both produce less expensive brands – Danone offers Cow & Gate, and Nestle offers Little Steps – which are priced below Aptamil and SMA, respectively. Based on 800g infant formula prices at Tesco in July 2024, Cow & Gate was £10.50, making it 22% (or £3.00) cheaper than Aptamil; this difference has reduced as a percentage of the Aptamil price since 2019, where Cow & Gate was 26% (or £2.85) cheaper. Little Steps was £7.95, making it 39% (or £5.05) cheaper than SMA; this difference has widened since 2019, when Little Steps was 25% (or £2.50) cheaper.<sup>78</sup>
- 4.29 Kendamil offers two 800g products which are sold at different price points. Kendamil Organic, at £15.00, is more expensive than any of the standard products, but cheaper than Aptamil Advanced (at £18.00). Kendamil ‘Classic’, at £12.00, is priced below Aptamil, HiPP Organic and SMA, but above Cow & Gate. Kendamil ‘Classic’ was originally offered at a comparable price to Cow & Gate from when it launched until February 2023, when its price (per 800g) rose by £2.00 (This price rise coincided with the reduction in product size, from 900g to 800g).
- 4.30 The difference in prices between brands leads to substantial differences in the cost over a baby’s first year of life, such that brand choice has a sizeable financial impact on parents. Buying the current market leader Aptamil’s 800g tubs at the Tesco price (in July 2024) would cost around £700 for a baby exclusively formula-fed from birth to 12 months, based on the feeding guidance stated on the pack.<sup>79</sup> On an equivalent basis, Little Steps (the cheapest widely available 800g product) would cost around £400; therefore, choosing Little Steps over Aptamil – as an example – could save parents around £300 over the first year of their baby’s life. Choosing Little Steps instead of Aptamil Advanced, meanwhile, could save parents around £540.
- 4.31 Since 2020, some retailers have sold 1.2kg packs of Aptamil, Cow & Gate, and SMA infant formula. These products were introduced at different times across retailers, and are not as widely available as the 800g sized tubs (only Cow & Gate

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<sup>78</sup> Based on RRP’s provided by Nestle, the recommended retail price difference between SMA and Little Steps was between [20-30%] throughout the period. From January 2024, several major retailers (including Tesco) reduced the price of Little Steps to around £7.95, hence resulting in a greater difference of 39% (£5.05) compared to SMA.

<sup>79</sup> Based on CMA calculations of the total volume of infant formula powder implied by the recommendations on the product packaging, assuming no formula is wasted. Prices based on average selling price at Tesco in July 2024.

is available in each of the major retailers, as of July 2024). Compared to the 800g products, 1.2kg products are cheaper per gram by an average of 16% (up to 26%) across retailers. In 2024, the price of Aptamil and Cow & Gate 1.2kg infant formula products fell at several retailers.<sup>80,81</sup>

### **Price variation across retailers**

- 4.32 From 2019 to July 2024, the price of any particular infant formula brand tended to be the same or similar across all the top five retailers; therefore, there would have been very little benefit in shopping around. There was effectively no variation in price of Danone's brands between the major retailers. The other branded products – Kendamil Organic and Kendamil, SMA and Little Steps, and HiPP Organic – were all priced the same across retailers for the majority of the period, though there was some variation in the timing of price changes. (As of July 2024, Boots has not reduced the price of Little Steps as the other retailers did in early 2024.) For charts of retail prices across retailers, see Appendix D Pricing analysis methodology and additional provisional findings: Reference tables and additional provisional findings.
- 4.33 Iceland currently sells some infant formula products at a lower price than the other major retailers. This comes after it reduced prices across its baby formula range in August 2023 by an average of 17% (9-34% across brands), and introduced two additional brands (SMA and Little Steps) at prices below those of the major retailers. This lower price for Little Steps was quickly matched by most other major retailers. Aldi and Lidl, as the other two major discount retailers, did not consistently sell branded infant formula products at a lower price than the major retailers in this period. By February 2024, Aldi had opted not to sell any branded infant formula other than its own-label product.<sup>82</sup>
- 4.34 For follow-on formula, there were more substantial differences in prices between retailers. Prices of these products generally have been more volatile, due to the presence of temporary price promotions. But there also appear to have been differences between retailers in the (non-promotional) base prices for many products.

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<sup>80</sup> For Aptamil, this price fall for the 1.2kg product was preceded by a fall in the price of Aptamil 800g at Asda and Tesco, such that the difference in price per gram between the two products remained roughly the same. At Morrisons, although the price of Aptamil 800g fell, there was no fall in price for the 1.2kg product, so the difference in price per gram became smaller.

<sup>81</sup> For Cow & Gate, there has not been a corresponding fall in the price of the 800g product (as of July 2024) at major retailers, so the difference in price per gram between the two products increased from 21% to 24%. Boots was already selling Cow & Gate 1.2kg at this lower price, so the difference in price per gram remained constant at 24%.

<sup>82</sup> However, Aldi did continue to sell the remaining stock it held of certain other brands, up to June 2024.



## Relative cost of follow-on formula and growing-up milk versus recommended alternatives

- 4.35 On average, follow-on formula products have been slightly cheaper (by £0.16 for 800g in 2023)<sup>83</sup> than their equivalent infant formula products (ie those from the same brand), largely due to the presence of price promotions on follow-on formula, which create temporary price decreases.
- 4.36 Growing-up milk is intended only for infants older than 12 months, and hence is not a substitute for infant formula or follow-on formula. The NHS advises that 'When your baby is one year old, they can start to drink whole cows' milk or sheep's or goats' milk (as long as these milks are pasteurised).'<sup>84</sup> Growing-up milk is substantially more expensive than cow's milk. We have estimated that families could save approximately £140 to £330 (depending on the brand of growing-up milk) over the course of a year, by feeding their toddler cow's milk instead of growing-up milk.<sup>85</sup>

### Special milks

- 4.37 Special milks (comfort, anti-reflux, and hungry baby milks) are sold at each of the top five retailers, though not in every store. In the period from January 2019 to July 2024, special milks were produced under the Aptamil, Cow & Gate, SMA, and HiPP Organic brands, with Kendamil introducing a comfort formula in January 2024. There are no special milks sold under the Little Steps brand.
- 4.38 Special milks are typically priced in relation to other formula products of the same brand. Hungry milks are typically priced at the same level as the standard infant formula product. Comfort and anti-reflux products are typically priced together, at a premium above the standard product of 14-33% across brands.<sup>86</sup> As with other infant formula, there is not substantial variation in the prices of special milks between retailers.

### Provisional conclusions on retail pricing

- 4.39 There are large price differences across infant formula brands, which translate into substantial differences in the cost of formula-feeding a baby from birth to 12

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<sup>83</sup> Based on the annual average of monthly price differences per sale at Tesco. The average price difference at the other five largest retailers was £0.10 (Morrisons and Sainsbury's), £0.40 (Asda) and £1.30 (Boots).

<sup>84</sup> NHS, Types of formula, [Types of formula - NHS](#), accessed 23/07/24.

<sup>85</sup> CMA analysis comparing the cost of a year's supply of growing-up milk (of each brand available at Tesco) to that of Tesco's own-label whole cow's milk (4-pint bottle), based on Tesco's online prices as of 29 August 2024, excluding any promotions or Clubcard pricing. The calculation assumes a toddler being fed the amount of growing-up milk recommended per day on the packaging (which varies by brand, from 300-400ml), versus 350ml cow's milk per day (as recommended by the NHS ([What to feed young children - NHS \(www.nhs.uk\)](#), accessed 17/10/24). Comparing brands of organic growing-up milk (HiPP Organic and Kendamil Organic) to Tesco own-label organic cow's milk (4-pint bottle) on the same basis, families could save approximately £50 to £200 over the course of a year.

<sup>86</sup> Based on average selling prices at Tesco, between March 2024 and May 2024.

months. Aldi's Mamia infant formula has consistently remained the cheapest infant formula product (per 800g) on the market, with the architecture of pricing across brands/sub-brands remaining fairly consistent over time. Prices for the same infant formula product do not generally vary across the five largest retailers or discount retailers (with the exception of Iceland since August 2023). These provisional conclusions are consistent with our November findings.

- 4.40 Prices for infant formula have risen across the period from 2019 to 2023, by 29-59% across brands for the best-selling product formats. Since the publication of our November report, we have observed reductions in the retail prices of some branded products, while others have remained stable. Despite this, prices are still at or above their levels at the start of 2023 for all but the two cheapest brands.
- 4.41 The cheaper brands of infant formula have not seen significant growth in their shares of supply since 2019 (see Table 4.1), despite the substantial rise in formula prices across the board. Mamia, the sole own-label product available (between 2020 and mid-August 2024) has not grown its share of supply of around [0-5%]. Little Steps, the cheapest branded product, has seen some growth since its launch in March 2019 but its share remains very small at around [0-5%]. Cow & Gate, the next cheapest branded product, has seen its shares of supply fall from [30-40%] in 2019 to [20-30%] in the first seven months of 2024.

## **Margins**

### **Our approach to the analysis**

- 4.42 In this section, we present data on the evolution of manufacturers' and retailers' margins. We consider the implications of our margins analysis alongside other evidence as part of our overall assessment of competition in the market in Section 7 Competition in the market.
- 4.43 In Appendix E Margins methodology, we set out our methodology for calculating manufacturers' and retailers' gross margins. We use the term 'gross margin' to refer to the percentage of revenues remaining after deduction of manufacturers' cost of sales, unless stated otherwise.

### **Our findings**

#### **Manufacturers' gross margins**

- 4.44 We set out below our analysis of the following:
- (a) Comparison between infant formula and follow-on formula gross margins.
  - (b) Trends over the period from January 2019 to May 2024.

- (c) Differences between manufacturers' gross margins.
- (d) Comparisons with gross margins generated in other markets.

*Comparison between infant formula and follow-on formula gross margins*

- 4.45 Figure 4.6 and Figure 4.7 below show the aggregate gross margins for infant formula and follow-on formula weighted by revenue across the manufacturers' brands.<sup>87</sup>
- 4.46 We observe that manufacturers' gross margins arising from the supply of infant formula and follow-on formula, in aggregate and weighted by revenue, have largely moved in line with each other.

*Trends over the period from January 2019 to May 2024*

- 4.47 In our November report, we said that:
- (a) 'Manufacturer price rises have been significant in recent years, and this has contributed to material increases in profit per unit for some manufacturers';
  - (b) 'Current profitability as a share of revenue is either below or broadly in-line with historical levels';<sup>88</sup> and
  - (c) 'Manufacturers have increased their unit prices for infant formula by a higher amount than their costs have increased, leading to increasing unit profitability (in £ per kg)'.<sup>89</sup>
- 4.48 In aggregate across all manufacturers, we calculate that absolute gross margins (revenues after deduction of manufacturers' cost of sales stated in pounds) arising from the sale of infant formula and follow-on formula products have increased over the period we have analysed.
- 4.49 The data we have obtained shows that manufacturers, in aggregate and weighted by revenue, have largely been able to pass on cost increases to their customers. Their gross margins (in aggregate and weighted by revenue) have broadly been stable in percentage terms over the period we have analysed (between around [x] and [x]), despite inflationary pressures.
- 4.50 We observe that the gross margins generated by the largest infant formula and follow-on formula manufacturers (those with shares of supply above 10%<sup>90</sup>) from

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<sup>87</sup> Aptamil, Aptamil Advanced, Cow & Gate, SMA, SMA Advanced, Little Steps, Kendamil, HiPP Organic, and Mamia.

<sup>88</sup> [CMA \(2023\), Price inflation and competition in food and grocery manufacturing and supply](#), Appendix A, paragraph A.5.

<sup>89</sup> [CMA \(2023\), Price inflation and competition in food and grocery manufacturing and supply](#), paragraph 5.42

<sup>90</sup> See shares of supply set out in Table 4.1 and Table 4.2

the supply of those products have followed different trends over the period we have analysed:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

4.51 [REDACTED].<sup>91</sup> [REDACTED].<sup>92</sup>

4.52 Based on the data we have obtained, [REDACTED]:

(a) [REDACTED].<sup>93</sup>

(b) [REDACTED].

4.53 As noted earlier in this section, in Shares of supply Kendal's share of supply has increased from [0-5%] in 2019 to [20-30%] in 2024 (January to July). However, to date, we have not seen good evidence that other manufacturers have responded to Kendal's growth by substantially reducing their gross margins, see Section 7 Competition in the market for further details.<sup>94</sup>

4.54 As shown in Figure 4.5 below, in aggregate across manufacturers and weighted by revenue, there was a small decrease of around three percentage points in gross margins, for both infant formula and follow-on formula between 2019 and 2023 (down from around [REDACTED] to around [REDACTED]). This decrease was driven by higher input costs. As noted earlier in this section, retail prices of infant formula products rose substantially in this period.

4.55 We observe that gross profit margins, in aggregate weighted by revenue, returned to around [REDACTED] in 2024. This increase in profitability appears to be largely driven by lower input costs.

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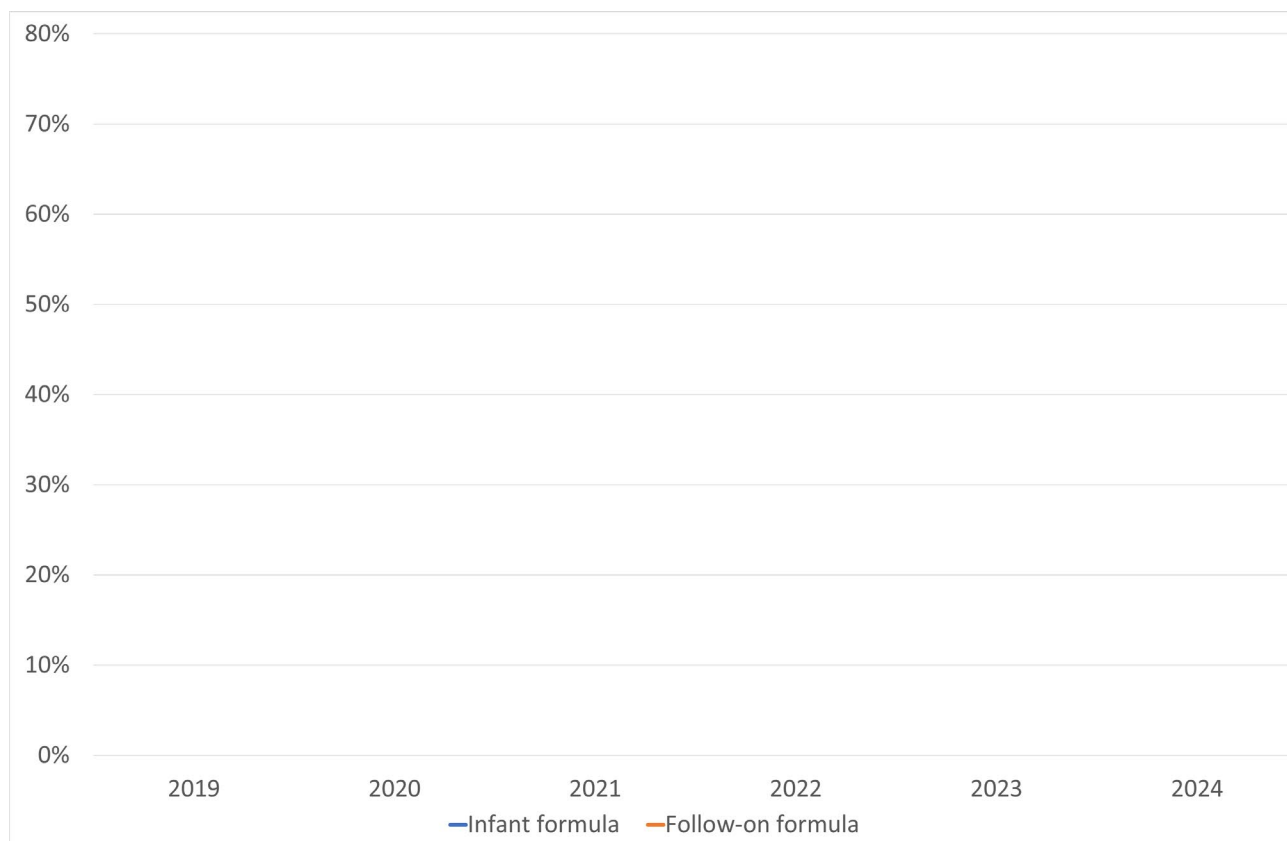
<sup>91</sup> See shares of supply set out in Table 4.1 and Table 4.2

<sup>92</sup> See shares of supply set out in Table 4.1 and Table 4.2.

<sup>93</sup> [REDACTED].

<sup>94</sup> We consider that, in order to fully assess how manufacturers have responded to the growth in Kendamil's share of supply based on gross profit margin data, we would need to make a comparison of their gross margins against a counterfactual which does not feature Kendamil's growth.

**Figure 4.5: Manufacturers' annual gross margins from January 2019 to May 2024 arising from the supply of infant formula and follow-on formula, in aggregate weighted by revenue (data points redacted).**



Source: CMA's calculations based on manufacturers' variable revenue and variable cost of goods data.

### *Differences between manufacturers' gross margins*

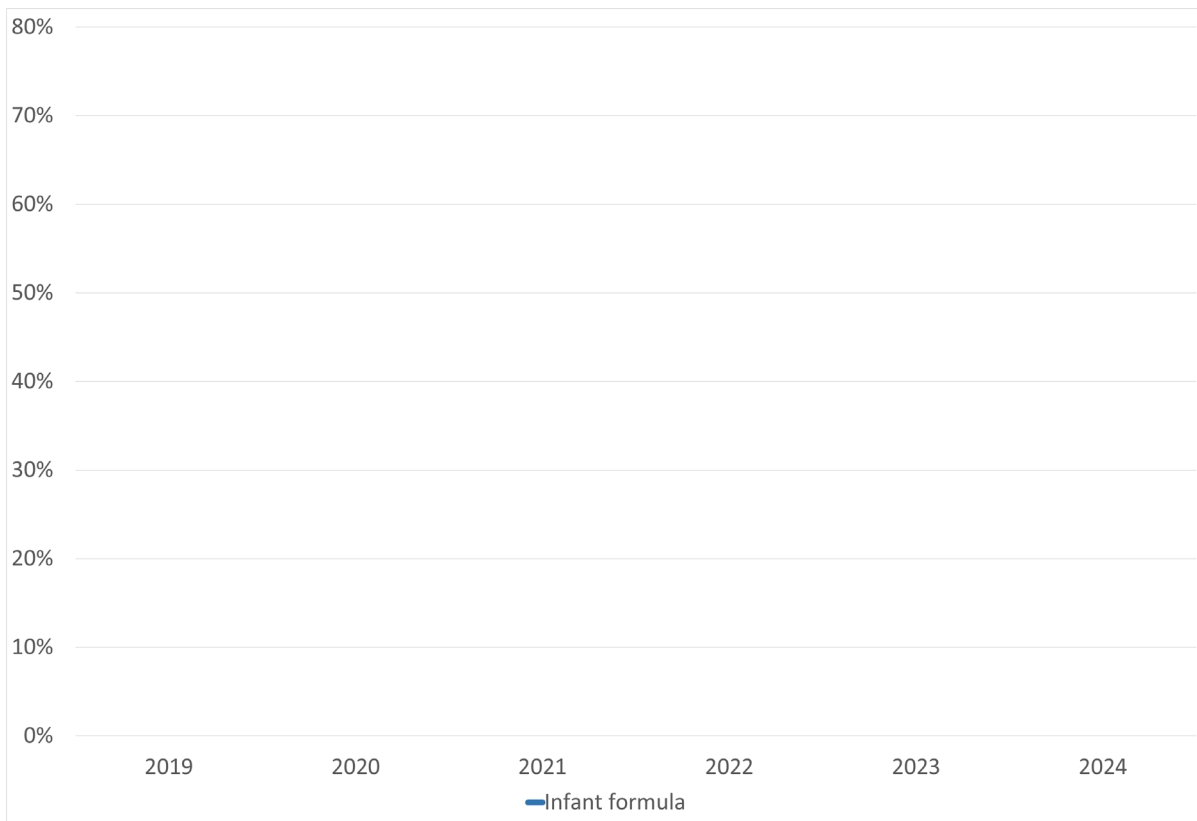
4.56 There have been significant differences between the gross margins generated:

- (a) by different manufacturers; and
- (b) by different brands.

4.57 Figure 4.6 and Figure 4.7 below show the aggregate gross margins from the supply of infant formula and follow-on formula respectively weighted by revenue across the manufacturers' brands.

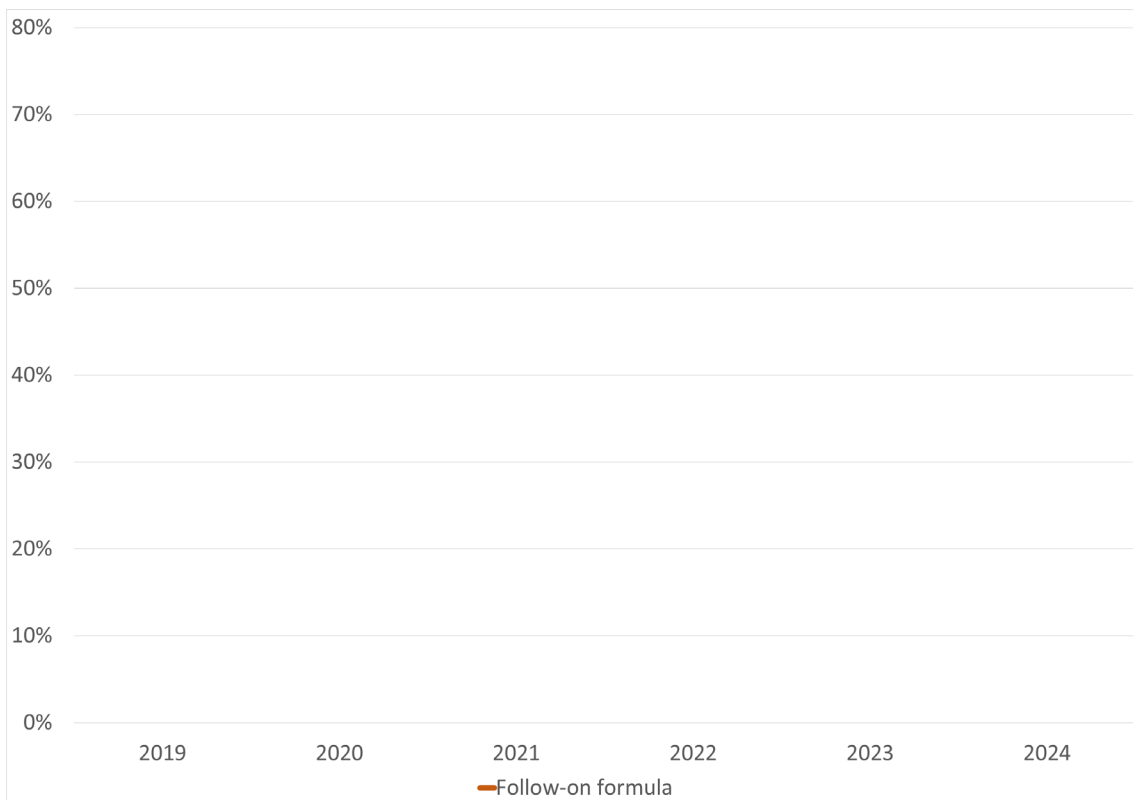
4.58 There has been a broad spread of gross margins generated by manufacturers' brands over the period. That is to say, while some brands have consistently generated gross margins greater than [REDACTED], others have generated much lower gross margins.

**Figure 4.6: Manufacturers' annual gross margins from January 2019 to May 2024 arising from the supply of infant formula, in aggregate weighted by revenue (data points redacted)**



Source: CMA's calculations based on manufacturers' variable revenue and variable cost of goods data.

**Figure 4.7: Manufacturers' annual gross margins from January 2019 to May 2024 arising from the supply of follow-on formula, in aggregate weighted by revenue (data points redacted).**



Source: CMA's calculations based on manufacturers' variable revenue and variable cost of goods data.

- 4.59 We note that manufacturers' gross margins, in aggregate and weighted by revenue, have been broadly stable over time, which indicates that they have been able to pass on cost increases to their customers.
- 4.60 The differences between the gross margins from the supply of infant formula generated by different manufacturers and by different brands are partly explained by differences between their product prices, as described earlier in this section. In addition, based on the data we have obtained, there are differences in the cost of producing infant formula between products which share similar characteristics (eg the same container size and form).<sup>95</sup> We consider that there are two key reasons for these cost differences:
- (a) **Different raw materials:** Different brands appear to use different raw materials and/or different proportions of raw materials.<sup>96</sup> We have found that the gross margins arising from the supply of higher priced products can be lower than the gross margins arising from the supply of lower priced products because the former can have higher raw material costs. We note, however, that higher raw material costs do not necessarily mean that there are greater benefits for babies.
  - (b) **Outsourced production:** Most of the manufacturers we have analysed outsource at least some of their production to third party producers. The manufacturers' gross margins generated from the supply of outsourced products are typically lower, which we assume is attributable to the inclusion of the third party producers' fixed costs (overheads) [X].

#### *Comparisons with gross margins generated in other markets*

- 4.61 In our November report, we said that 'some suppliers have seen modest reductions in overall profitability in recent years, but as a share of revenue, margins of major suppliers of infant formula remain among the highest of all the product categories we have considered'.<sup>97</sup>
- 4.62 We have obtained more detailed financial information from manufacturers which is consistent with our initial view that their gross margins from the supply of infant formula and follow-on formula, in aggregate and weighted by revenue, have been among the highest of the grocery products we considered in our November report

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<sup>95</sup> We note that some differences in the cost of raw materials may be due to differences between manufacturers' recognition of costs in their accounting systems. However, we observe that the differences are still present even where the higher priced and cheaper products are supplied by the same manufacturer and, therefore, where we would expect their accounting methodologies to be the same.

<sup>96</sup> Based on our analysis, we calculate that the cost of raw materials can differ quite significantly between brands.

<sup>97</sup> CMA (2023), [Price inflation and competition in food and grocery manufacturing and supply](#), paragraph 5.42.

(for example, branded beans, mayonnaise, and lemonade).<sup>98</sup> However, we place limited weight on comparisons between gross margins generated by different manufacturers on different types of products as they are not directly comparable with infant formula or follow-on formula. We therefore did not seek further information on the gross margins generated from the supply of other types of products.

#### *Provisional conclusions on manufacturers' gross margins*

4.63 It is our provisional view that, over the period from January 2019 to May 2024:

- (a) Manufacturers, in aggregate and weighted by revenue, have largely been able to pass on cost increases and therefore maintain stable margins,<sup>99</sup> despite inflationary pressures.
- (b) Manufacturers' gross margins from the supply of infant formula and follow-on formula, in aggregate and weighted by revenue, have been among the highest of the grocery products we considered in our November report. However, we place limited weight on comparisons between gross margins generated by different manufacturers on different types of products as they are not directly comparable with infant formula or follow-on formula.
- (c) There have been significant differences between the gross margins generated by different manufacturers and by different brands. The differences are partly explained by differences between their product prices. In addition, based on the data we have obtained, there are also differences in the cost of producing infant formula between products which share similar characteristics (eg the same container size and form).
- (d) While Kendal's share of supply has increased from [0-5%] in 2019 to [20-30%] in 2024 (January to July), we have not seen good evidence that other manufacturers have responded to its growth by substantially reducing their gross margins. [✂].

#### **Retailers' gross margins**

4.64 We set out below our analysis of the following:

- (a) Comparison between infant formula and follow-on formula gross margins.
- (b) Trends over the period from January 2019 to May 2024.

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<sup>98</sup> CMA Autumn Update report: Price inflation and competition in food and grocery manufacturing and supply, [Appendix A: Evidence and findings for individual product categories](#).

<sup>99</sup> In aggregate across all manufacturers, weighted by revenue.

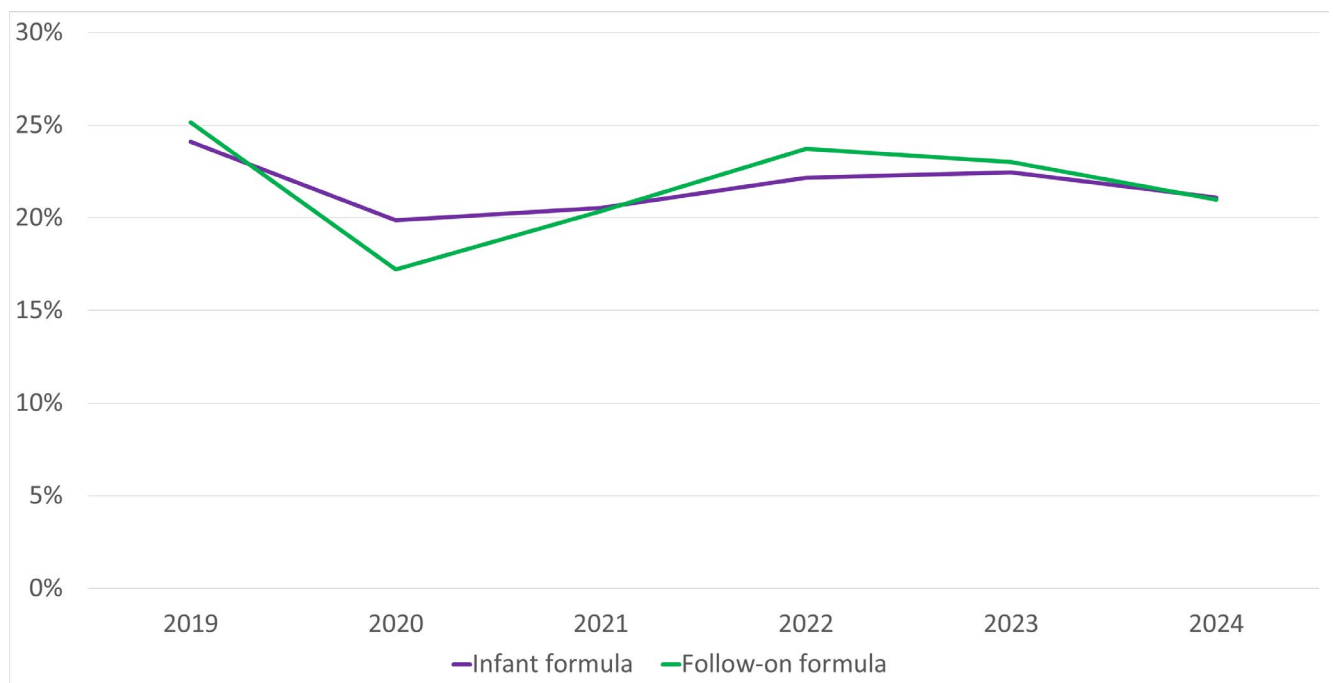


- (c) Differences between retailers' gross margins.
- (d) Comparisons with gross margins generated in other markets.

*Comparison between infant formula and follow-on formula gross margins*

- 4.65 We observe that retailers' gross margins, in aggregate and weighted by revenue, arising from the supply of infant formula and follow-on formula have been similar over the period we have analysed, albeit that there has been slightly more volatility (plus and minus around one to three percentage points) in gross margins from the supply of follow-on formula compared with infant formula. We note that this may be a result of regulations permitting advertising and promotion of follow-on formula but not infant formula.
- 4.66 Figure 4.8 below shows retailers' gross margins arising from the supply of infant formula and follow-on formula, in aggregate and weighted by revenue, from January 2019 to May 2024.

**Figure 4.8: Retailers' annual gross margins from January 2019 to May 2024 arising from the supply of infant formula and follow-on formula, in aggregate weighted by revenue.**



Source: CMA's calculations based on retailers' variable revenue and variable cost of finished goods data.

*Trends over the period from January 2019 to May 2024*

- 4.67 In aggregate across the [redacted] retailers, we calculate that their gross margins (weighted by revenue) arising from the sale of:

- (a) Infant formula has stayed within a relatively narrow range of around four percentage points over the period we have analysed (between around 20% and 24%).
- (b) Follow-on formula has stayed within a slightly broader range of around eight percentage points over the period we have analysed (between around 17% and 25%).

4.68 This shows that, with regard to both infant formula and follow-on formula, retailers have largely been able to pass on cost increases and maintain stable margins, despite inflationary pressures, in aggregate weighted by revenue. At times of rapidly rising costs, we might expect some volatility and reduction in margins, with retailers absorbing some of the higher costs into their margins rather than passing through cost increases in full.

4.69 We observe that retailers' gross margins decreased slightly around 2020,<sup>100</sup> which coincided with the COVID-19 pandemic, but then returned to around their previous level.

#### *Differences between retailers' gross margins*

4.70 Figure 4.9 and Figure 4.10 below show retailers' gross margins from the supply of infant formula and follow-on formula respectively, in aggregate and weighted by revenue.

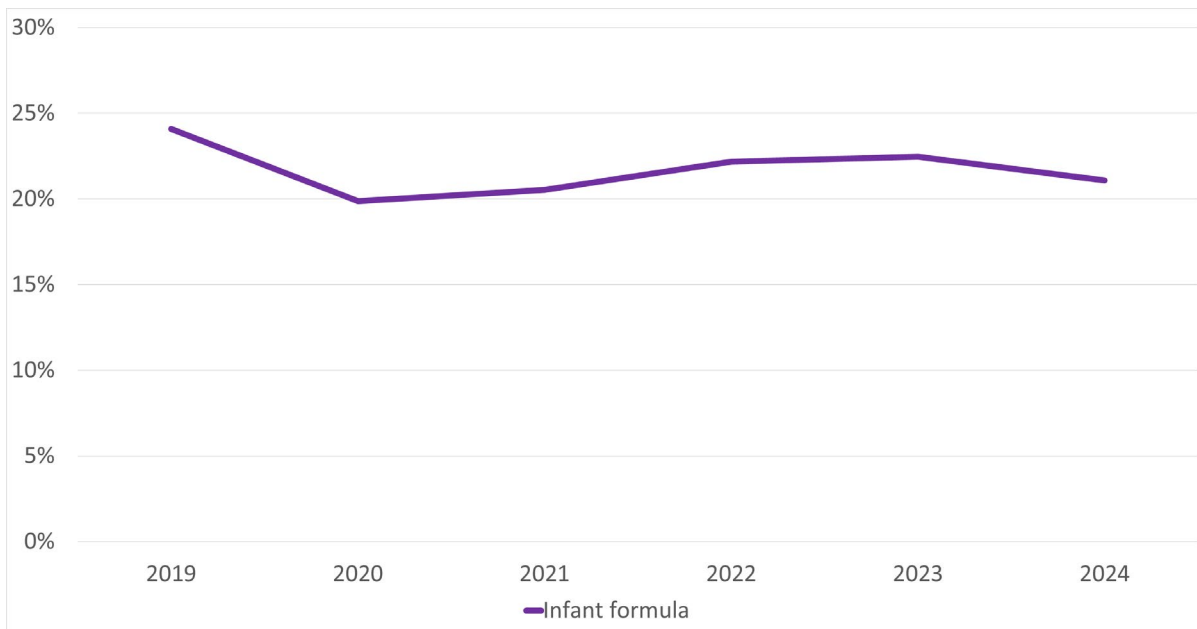
4.71 With regard to the supply of both infant formula and follow-on formula over the period from January 2019 to May 2024, we note that:

- (a) There has been a broad spread of gross margins generated by different retailers over the period. While several retailers have consistently generated margins around 20 percent, others have generated much lower margins.
- (b) In aggregate, weighted by revenue, we note that retailers' gross margins have broadly been stable, which means that they have been able to pass on cost increases to their customers.

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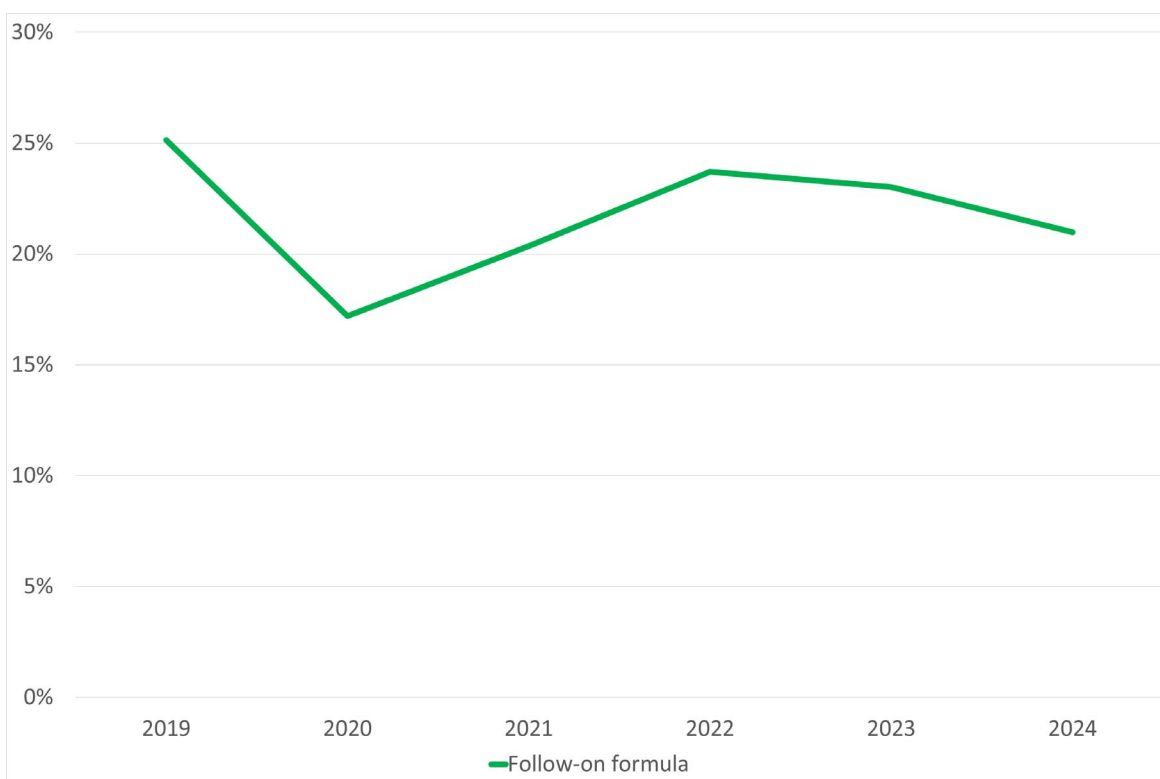
<sup>100</sup> Infant formula: decrease of around three percentage points. Following on formula: decrease of around six percentage points.

**Figure 4.9: Retailers' annual gross margins from January 2019 to May 2024 arising from the supply of infant formula, in aggregate weighted by revenue.**



Source: CMA's calculations based on retailers' variable revenue and variable cost of goods data.

**Figure 4.10: Retailers' annual gross margins from January 2019 to May 2024 arising from the supply of follow-on formula, in aggregate weighted by revenue.**



Source: CMA's calculations based on retailers' variable revenue and variable cost of goods data.

4.72 We observe that the majority of retailers generated gross margins from the supply of infant formula and follow-on formula within a spread of between around 15% to 25% over the period (across multiple brands and products sold).

4.73 It is our provisional view that differences in the gross margins between retailers are largely driven by two factors:

(a) **Different purchasing costs:** Differences between retailers' purchasing costs (against each other for the same infant formula products in the same time period). As noted earlier in this section in Retail pricing, the retail price of any particular infant formula product has tended to be the same or similar across all of the top five retailers, so any differences in their purchasing costs are typically reflected in differences in their gross margins.

(b) **Different product mixes:** Differences in the product mix between retailers. For example, customers at one retailer will choose different brands and different forms (eg powder, liquid or tabs) compared to customers at another retailer.

#### *Comparisons with margins generated in other markets*

4.74 We observe that retailers' gross margins from the supply of infant formula have tended to be at the lower end of their gross profit margins arising from their supply of other grocery products.<sup>101</sup>

#### *Provisional conclusions on retailers' gross margins*

4.75 It is our provisional view that, over the period from January 2019 to May 2024:

(a) Retailers' gross margins, in aggregate and weighted by revenue, generated from their supply of infant formula and follow-on formula have been similar over the period we have analysed, albeit there is slightly more volatility in gross margins from the supply of follow-on formula compared with infant formula. We note that this may be a result of regulations permitting advertising and promotion of follow-on formula but not infant formula.

(b) Retailers, in aggregate and weighted by revenue, have largely been able to pass on cost increases and maintain stable margins, despite inflationary pressures.

(c) The majority of retailers generated gross margins from the supply of infant formula and follow-on formula within a spread of between around 15% to 25% over the period (across multiple brands and products sold).

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<sup>101</sup> CMA's calculations based on retailers' variable revenue and variable cost of goods data.

- (d) Retailers' gross margins from the supply of infant formula and follow-on formula, in aggregate and weighted by revenue, have tended to be at the lower end of their gross margins arising from their supply of other grocery products.

### **Provisional conclusions on margins**

4.76 It is our provisional view that, with regard to the supply of infant formula and follow-on formula:

- (a) Manufacturers' gross margins, in aggregate and weighted by revenue, arising from the supply of infant formula and follow-on formula have been around the same level in percentage points and have largely moved in line with each other.
- (b) Retailers' gross margins, in aggregate and weighted by revenue, arising from the supply of infant formula and follow-on formula have been similar over the period we have analysed, albeit there has been slightly more volatility in gross margins from the supply of follow-on formula compared with infant formula. We note that this may be a result of regulations permitting advertising and promotion of follow-on formula but not infant formula.
- (c) Manufacturers and retailers, in aggregate and weighted by revenue, have been able to pass on cost increases and therefore maintain relatively stable margins.
- (d) While Kendal's share of supply has increased from [0-5%] in 2019 to [20-30%] in 2024 (January to July), we have not found good evidence that other manufacturers have responded to this growth by reducing their gross margins. [✂].
- (e) There are significant differences between the gross margins from the supply of infant formula generated by different manufacturers and from different products supplied by the same manufacturer. This is partly explained by differences between their product prices and partly by differences in the cost of producing the products, even where they share similar characteristics (eg the same container size and form).
- (f) Manufacturers' gross margins, in aggregate and weighted by revenue, have been among the highest of all of the grocery products we considered in our November report.
- (g) Retailers' gross margins have tended to be lower than their gross margins arising from their supply of other grocery products.

## Product differentiation

- 4.77 Within the constraints of regulations, formula manufacturers seek to appeal to different consumers in various ways including through: the appearance of packaging; the messaging about their products (eg advertising and statements on labels); different formats (powder, ready-to-feed, and tabs); and offering multiple brands at different price points (eg, as described earlier in this section in Retail pricing, Danone has Cow & Gate, Aptamil, and Aptamil Advanced, and Nestle has Little Steps, SMA, and SMA Advanced) and varieties (eg special milks and organic versions).
- 4.78 We explore the role and extent of product differentiation in this market further below.

## Government policy and legislation on nutritional composition

- 4.79 Government policy and legislation<sup>102</sup> seek to ensure that all infant formulas meet compositional standards (which includes minimum and maximum levels of essential nutrients). That means that all infant formulas provide all the nutrients a healthy baby needs for development and growth. Legislation also ensures that infant formula and follow-on formula contain only safe ingredients, so they do not endanger the health of babies.
- 4.80 The regulations may be updated where appropriate. For example, DHSC told us that over many years, the composition of infant formula has evolved due to advances in scientific evidence, with legislation on compositional standards updated to reflect this, which has led to better outcomes for infants. In 2020 it became mandatory to include docosahexaenoic acid (DHA) in infant formula and follow-on formula. DHA is considered beneficial for babies' brain and eye development.<sup>103</sup> In the same assessment, the European Food Safety Authority considered various other nutrients but did not mandate their inclusion in all infant formulas. For example, for non-digestible oligosaccharides (ie FOS and GOS) it concluded that there was an 'absence of convincing evidence of any beneficial effects' on infant health.<sup>104</sup>
- 4.81 The CMA considers that the legislation, therefore, has the effect of maintaining a certain level of homogeneity between infant formulas through the need to ensure that safety standards are met and the products contain all the nutrients a healthy baby needs for development and growth (and no harmful ingredients). It also

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<sup>102</sup> Detail on the regulatory and legislative framework relating to infant formula is set out in Section 3 Market overview.

<sup>103</sup> The European Food Safety Authority's (EFSA) assessment found that there was 'no necessity' to require manufacturers add a number of other things to infant formula or follow-on formula. For example it found that 'there is no necessity to add arachidonic acid, eicosapentaenoic acid, non-digestible oligosaccharides, "probiotics" or "synbiotics", chromium, fluoride, taurine and nucleotides to infant and follow-on formulae'. ESFA (2014), [Scientific Opinion on the essential composition of infant and follow-on formulae](#), p3.

<sup>104</sup> ESFA (2014), [Scientific Opinion on the essential composition of infant and follow-on formulae](#), p38.

allows for any meaningful new scientific developments to be included in all infant formulas.

4.82 However, it is also our view that the legislation does not lead to complete homogeneity of nutritional provision. Provided the compositional standards are met, it should be possible for manufacturers to add other nutrients and ingredients that have been proven to be suitable (in terms of expected benefits and safety considerations).<sup>105</sup>

### **Manufacturers' approaches to product differentiation**

4.83 Manufacturers seek to differentiate their products in a range of ways, including:

- (a) Nutritional composition (eg the macro- and micro-nutrients within the formula);<sup>106</sup>
- (b) Ingredients and their quality or provenance (eg organic milk or no palm oil);
- (c) Other aspects of formula content or its production which parents value, perhaps because they align with beliefs and/or preferences (for example halal, kosher or vegetarian); and
- (d) Features that are not about formula content, but instead about aspects such as packaging or ease of use (eg recyclable packaging, ready-to-feed, or tabs).

4.84 To some extent these categories overlap, for example, where parents value some features as both 'high-quality ingredients' and for their environmentally-friendly credentials. Further, manufacturers will often combine more than one point of difference into a given brand or product.

4.85 Manufacturers may signal trustworthiness and superiority in more subtle ways, including by connoting intangible and/or non-verifiable benefits through the use of words or phrases such as 'inspired by research' or 'advanced', or through their packaging design. We discuss use of such language in Section 6 Impact of the regulatory framework and regime: On-pack messaging.

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<sup>105</sup> The introductory text of article 6 states: In order to ensure innovation and product development, the voluntary addition to infant formula and follow-on formula of ingredients not covered by specific requirements of this Regulation should be possible. All ingredients used in the manufacture of infant formula and follow-on formula should be suitable for infants and their suitability should have been demonstrated, when necessary, by appropriate studies. It is the responsibility of food business operators to demonstrate such suitability and of national competent authorities to consider, on a case-by-case basis, whether this is the case. [Commission Delegated Regulation \(EU\) 2016/127](#), Article 6(6). Department of Health and Social Care (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 01/10/24.

<sup>106</sup> As noted in Section 6 Impact of the regulatory framework and regime, 'health and nutrition' claims are not permitted on infant formula and we have found broad compliance with this requirement.

- 4.86 Manufacturers told us that they invest significant sums in research and development (R&D), enabling them to develop differentiated products that deliver benefits for babies, and that future beneficial nutritional innovation is possible. For further detail on manufacturers' submissions and R&D spending, see Section 7 Competition in the market.
- 4.87 Some product differences are more easily interpreted and assessed by parents. For example, there is a well-established process for verifying organic provenance, and trial-and-error will quickly establish for a parent how easy a given product is to use. We would typically encourage competition on product differences such as these.
- 4.88 For other differences, however, an accurate assessment of their benefit would be near-impossible for parents – for example, the nutritional benefit of a non-mandatory additive.
- 4.89 Section 5 Consumer behaviour: Drivers of brand choice explores parental decision-making, and the impact of product differentiation on brand and product choice, in depth.

### **Provisional conclusions on product differentiation**

- 4.90 Government policy and legislation on nutritional composition has the effect of limiting the extent to which formula products can vary. Manufacturers, however, have strong commercial incentives to assert the merits of their products including, where permitted, their nutritional benefits. As discussed in Section 5 Consumer behaviour, parents and carers in this market are often vulnerable which can affect their decision-making. Overall, we consider that the understandable difficulties parents are likely to have in assessing the benefits of a given product are exacerbated by manufacturers' efforts to signal certain products are superior, including through the connotation of intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products, even in the face of government policy and legislation.



## 5. Consumer behaviour

- 5.1 To inform our market study we have analysed the impact of consumer behaviour in this market on the outcomes we have observed. To do this we conducted a literature review, held evidence-gathering meetings with relevant stakeholders, and requested any surveys undertaken or commissioned by manufacturers and retailers on consumer behaviour. We also commissioned a qualitative research study from Thinks Insight and Strategy (referred to as 'our consumer research') on experiences using infant formula and follow-on formula.
- 5.2 Appendix B The consumer journey outlines the evidence we reviewed to lead us to the findings on consumer behaviour set out below as well as our approach to ensuring our provisional conclusions based on this evidence are robust.

### Formula milk use

- 5.3 A large proportion of mums<sup>107</sup> plan to breastfeed their baby. One survey, Survey A,<sup>108</sup> found that, by the end of the third trimester of pregnancy, almost all mums (94%) had made a plan as to how they intended to feed at birth, and around two thirds said they planned exclusive breastfeeding. Our analysis of World Health Organisation survey data for the UK found that 84% of survey respondents planned during pregnancy to only breastfeed their baby following the first two weeks of birth, 10% to combination feed from birth and 5% to formula feed only.<sup>109</sup>
- 5.4 However, most parents use formula milk at some point. Official statistics indicate that within two months of birth more than two thirds of babies are given at least some formula milk.<sup>110</sup> Survey A found that exclusive breastfeeding dropped off from 42% at birth, to 36% at 2-3 months, to 18% at 6-7 months and then to 17% at 10-11 months. This suggests that from the age of 7 months more than four in five babies are being given at least some formula, with the figures showing that around two thirds of these are exclusively fed on formula. Which? found that 75% of parents used formula milk in their child's first 12 months. Our analysis of World Health Organisation survey data for the UK found that formula use was far less likely to have been planned than exclusive breastfeeding, especially for those who were combination feeding or who introduced formula after starting with breastmilk.

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<sup>107</sup> Where 'mums' is used in place of 'consumers' this is because the research in evidence of the statements was based only on their experiences and did not also include dads or other carers.

<sup>108</sup> See Appendix B The consumer journey for more detail on Survey A, including on its methodology.

<sup>109</sup> CMA analysis of UK data: World Health Organization and the United Nations Children's Fund (UNICEF) (2022), [Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report](#).

<sup>110</sup> Office for Health Improvement and Disparities (2023), experimental data, [Breastfeeding at 6 to 8 weeks after birth, Apr 22 to Mar 23](#); Public Health Scotland (2023), [Infant feeding statistics Financial year 2022 to 2023](#); and HSC Public Health Agency (2024) [Health Intelligence Briefing](#). Data is for England, Scotland and Northern Ireland.

Of those not feeding as planned, 87% said they had fed formula more, longer or earlier than planned.<sup>111</sup>

- 5.5 In terms of the stage of product used, approximately half of mums are using infant formula milk in the first 6 months. This then drops as follow-on milk begins to be introduced, though approximately one quarter of mums use infant formula milk in the 7-12 months period. This is in line with NHS advice that ‘research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to have first infant formula as their main drink until they are 1 year old.’<sup>112</sup> However, a higher proportion of mums (39%) do use follow-on formula when the baby is aged between 7 and 12 months. Following 12 months, approximately 1 in 5 mums are using toddler / growing-up milk.
- 5.6 Greater use of infant formula (as opposed to breastfeeding) has been found in the UK among younger mothers (below age 30); those living in more deprived areas; and those who finished education earlier.<sup>113</sup> Higher rates of breastfeeding and lower use of infant formula have been found among minority ethnic groups.<sup>114</sup>
- 5.7 There was an even split between mums determining which brand of formula milk to use pre- and post-birth. Around half of mums who had decided which brand of formula to use made their choice before birth, with one in five making that choice even before pregnancy. A quarter made their brand choice at birth (which we know usually takes place in a healthcare setting<sup>115</sup>) and just over a quarter during their baby’s first year.

## Brand loyalty and switching

- 5.8 It is well-established in consumer research that once parents have chosen a brand of formula, they rarely switch unless they experience health or feeding issues. Almost four in five stay loyal to their brand of first choice. Further, most parents do not switch brands if they move through the stages to follow-on formula and toddler milk. For example, one survey, Survey C<sup>116</sup> found that across three brands (SMA, Aptamil and Cow & Gate), around one in five consumers who went on to use follow-on formula, switched to a different brand from that used for infant formula.
- 5.9 Limited switching was echoed in responses to our invitation to comment. For example, The Baby Feeding Law Group<sup>117</sup> told us that ‘brand loyalty is high’<sup>118</sup>

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<sup>111</sup> CMA analysis of UK data: World Health Organization and the United Nations Children’s Fund (UNICEF) (2022), [Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report](#).

<sup>112</sup> NHS, Types of formula, [Types of formula milk - NHS \(www.nhs.uk\)](#), accessed 17/09/24

<sup>113</sup> Official Statistics, [Infant Feeding Survey 2010](#)

<sup>114</sup> Official Statistics, [Infant Feeding Survey 2010](#)

<sup>115</sup> Statista, [Number of live births in England and Wales from 2010 to 2021, by place of delivery](#), accessed 23/10/24

<sup>116</sup> See Appendix B The consumer journey for more detail on Survey A, including on its methodology.

<sup>117</sup> The Baby Feeding Law Group UK was founded by Baby Milk Action in 1997 and has been working for over 25 years to strengthen UK baby feeding laws in line with UN recommendations.

<sup>118</sup> Baby Feeding Law Group’s response to the CMA’s invitation to comment, p10

and Danone that ‘parents and caregivers do not often switch’.<sup>119</sup> While not commenting on switching rates, Nestle stated that their ‘research shows that the most commonly stated factor for switching infant formula is baby not getting on well with formula/ experiencing stomach issues’.<sup>120</sup>

- 5.10 Similarly, our consumer research found that most parents have internalised the belief that switching is ‘bad for their infant’ so they are very unlikely to switch unless they need to for health reasons. It also found that as a baby gets older and feeding is well-established, brand loyalty tends to become more entrenched. It also found that most parents continue to use the same brand with subsequent children.<sup>121</sup>
- 5.11 We note that parents’ loyalty to a particular brand means that they typically continue to buy that brand, regardless of increases to the price of the brand.

### **Drivers of brand choice**

- 5.12 The evidence we reviewed shows that personal recommendations are the main factor driving parents’ choice of infant formula brand. Other important drivers of choice were availability and visibility in-store, online presence, and visibility in hospitals. Here we discuss these decision-making factors, along with the role of price and brand awareness and reputation.
- 5.13 Before turning to these factors, we note that decision-making in this market can be challenging, given parents are purchasing a product which is exclusively for the use of someone else who cannot verbalise their feelings about the product and whose non-verbal signals can be difficult to interpret.

### **Personal recommendations**

- 5.14 The evidence we have reviewed shows that recommendations, from family, friends, or healthcare professionals, are the key factor driving brand decisions on infant and follow-on formula. Their importance exceeds all other factors. For example, Survey A found that recommendations from family or friends were the most common ‘main influence’ on choice at all times of decision and were particularly important for those choosing before or during pregnancy and for first-time mums.
- 5.15 Around one in five of all mums using formula cited healthcare professional recommendations as a ‘main influence’ on brand choice. These recommendations were particularly important when making a brand choice at birth, cited by 42% of

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<sup>119</sup> Danone’s response to the CMA’s invitation to comment, p3

<sup>120</sup> Nestle’s response to the CMA’s invitation to comment, p5

<sup>121</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp6-9, 46

mums. While we understand that the NHS does not endorse any brand of formula, it is likely that simply seeing a brand in hospital creates a perceived recommendation.

- 5.16 Recommendations are inherently linked to brand awareness and reputation. Our consumer research found that, ‘personal recommendations and brand reputation are the key driving factors in brand choice. Consumers want to hear from others who have used a specific brand and reported positive experiences of this, and a brand that is therefore familiar due to being used by family and friends previously is reassuring.’<sup>122</sup>

### **Other factors driving brand choice**

- 5.17 The following factors were all highlighted in the evidence we reviewed as significant drivers of parents’ brand choice, but were all less important than personal recommendations:

- **Availability and visibility in store:** Many parents browse the baby aisles ahead of the birth of their baby and start to think about products. It is also important to parents that their chosen brand will be available in their local shop. For those making a snap decision, availability is the key factor.<sup>123</sup>
- **Online presence:** Many parents search for information about formula milk online, with product reviews and parents’ blogs being particularly important sources of information.
- **Visibility in hospitals:** For some parents (usually those who begin using formula in hospital at birth because of unexpected difficulties breastfeeding), brand visibility in hospitals is a significant driver of decision-making; the brand they are given or have used in hospital is usually the brand that they continue to use. NHS Trusts typically purchase one or more of Aptamil, Cow & Gate, and SMA, so parents are most likely to see one or more of these brands in hospital.<sup>124</sup> Consistent with this, the Royal College of Midwives told us that the brands available on wards are generally one or two of Aptamil, SMA, and Cow & Gate. The Royal College of Midwives noted that the availability of brands on wards may ‘confer some sense of recommendation’ by midwives that these are superior milks, which parents would typically want to continue with.

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<sup>122</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p7.

<sup>123</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp33, 42.

<sup>124</sup> See sub-section ‘The availability of information to support an informed brand choice’ later in this section.

## **Brand reputation is a consistent theme in all these drivers of choice**

- 5.18 Brand awareness and reputation play an important role when parents are deciding which brand of formula milk to purchase. For example, a survey for Which? showed almost two thirds (61%) of respondents citing ‘trusted brand name’ as a top reason for choosing a particular brand of formula milk. In relation to three brands (SMA, Cow & Gate and Kendamil), one survey, Survey D<sup>125</sup> found that ‘I don’t know much about this brand’ was the top barrier to consideration for each of these brands. This was also a significant reason cited by one in five respondents in relation to another brand (Aptamil), trumped only by ‘this brand is too expensive’. Similarly, our consumer research found that brand reputation was one of two ‘key driving factors in brand choice’ (alongside personal recommendations).<sup>126</sup>
- 5.19 Further, it is notable that it is brand reputation that is cited by parents as a key driver of their decision-making, rather than concrete attributes of the product. For example, parents cite that brand desire is driven by factors such as ‘closeness;’ ‘trust;’ and ‘reflects my values’.
- 5.20 All the drivers of brand choice, that is recommendations, visibility in-store, online presence and visibility in hospitals, are points at which brand awareness and reputation can factor into parents’ decision-making. Equally, these are points at which manufacturers can seek to build brand awareness and reputation amongst parents. For example, when a personal recommendation is given, a perspective on a brand’s reputation is being shared, which in turn helps inform someone else’s view of a brand.
- 5.21 Parents can also form perceptions of brands when they are going about their daily lives before they are actively in the market (known as the ‘priming stage’). There is evidence of a strong priming stage in this market, with one survey showing only 7% of parents buying infant milk with no priming bias towards a particular brand.

## **The role of price in decision-making**

- 5.22 The evidence we have reviewed clearly shows that doing what is best for their baby is the overriding motivator for parents, both in their decisions between breast milk and formula and in their brand choice once they have decided to use formula.
- 5.23 Often, parents use price as a proxy for quality and so would actively choose higher-priced products. For example, Survey A found that three quarters of mums agreed with the statement, ‘My child must have the best I can afford.’ First-time

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<sup>125</sup> See Appendix B The consumer journey for more detail on Survey D, including on its methodology.

<sup>126</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p7.

parents and those feeling guilty about formula use are particularly likely to choose premium products.<sup>127</sup>

- 5.24 However, for some parents 'lower price' was a key factor in choosing an infant formula brand. Which? found that 21% of survey respondents cited 'low price' as a top three reason for choosing a particular brand of formula. However, even when parents are looking for a cheaper product, there is evidence that they are still focused on doing what is best for their baby and tend to prefer a trusted brand. Our consumer research found widespread scepticism of own-label products in this market.<sup>128</sup>

### **The availability of information to support an informed brand choice**

- 5.25 Parents may receive or proactively access information to support their infant formula brand choice from one or more of the following sources:

- The NHS, other health services and the UK governments;
- Formula milk manufacturers and retailers; and
- Other sources such as online forums, parenting websites, and word of mouth.

### **Information provision through the NHS and UK governments**

- 5.26 The UK governments consider supporting breastfeeding to be a public health priority<sup>129</sup> and, as such, the focus of infant feeding information provided by the NHS to parents relates to this.
- 5.27 There is some guidance and information for parents relating to formula feeding. This includes information on baby feeding given during the antenatal period via the NHS<sup>130</sup> (although we were told that antenatal classes are not always universally available) and booklets and information given out through the 'Start for Life' programme.<sup>131</sup> We found that the information provided by the NHS focuses on safe feeding and ensuring parents know they can continue to use first infant milk until their baby is one year old.
- 5.28 Some information is available on nutritional sufficiency. For example, the NHS's Start for Life website states that 'All infant formulas will meet your baby's nutritional

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<sup>127</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp9, 32.

<sup>128</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp9, 33.

<sup>129</sup> Public Health England, [Guidance Early years high impact area 3: Supporting breastfeeding](#), accessed 05/08/24, Welsh Government (2019), [All Wales Breastfeeding Five Year Action Plan](#), p1, Scottish Government (2019), [Becoming Breastfeeding Friendly Scotland](#): report, p1, Public Health Agency (2024), [Health Intelligence Briefing](#), p4.

<sup>130</sup> National Institute for Health and Care Excellence (NICE) (2021), [Antenatal care](#), paragraphs 1.3.15 and 1.3.20.

<sup>131</sup> NHS, [Bottle feeding - NHS](#), accessed 04/08/24.

needs, regardless of brand or price.<sup>132</sup> The Scottish government's Parent Club website<sup>133</sup> and the NHS Wales website<sup>134</sup> contain similar information, as do materials published by the Public Health Agency in Northern Ireland.<sup>135</sup>

5.29 However, our consumer research found that many parents did not feel they had received enough information from the NHS on formula feeding. Overall, the NHS was seen by respondents to our consumer research, and to the World Health Organisation survey we analysed, as a trusted source of information and parents welcome advice from healthcare professionals.<sup>136,137</sup> Some parents also felt supported by the NHS when they began to use formula. However, there were many examples of parents who did not feel they had received enough information, particularly ahead of the birth of their baby, as clinical guidelines recommend. Many parents wished they had been better prepared for unexpected feeding situations.<sup>138</sup>

5.30 All of the healthcare professional groups and infant feeding charities with whom we spoke supported the view that the NHS could provide more and better information on formula feeding.<sup>139</sup> Concerns we heard included:

- The NHS does not have the resources to combat the influence of powerful and sophisticated marketing of infant formula;
- Consumers accessing unreliable information online; and
- Information provided being anecdotal rather than evidence-based.

#### *Consumer beliefs about the similarity of products*

5.31 Messaging on nutritional sufficiency (as discussed earlier in this sub-section) is a key piece of information in helping parents make an informed brand choice. We have therefore investigated to what extent parents know about nutritional sufficiency and believe there is similarity or difference between products.

5.32 As we discuss in Appendix B The consumer journey, our consumer research found that parents generally understand that all infant formulas must meet a

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<sup>132</sup> NHS, [Bottle feeding - NHS](#), accessed 19/08/24.

<sup>133</sup> Scottish Government, [Formula feeding | Parent Club](#), accessed 15/08/24.

<sup>134</sup> NHS Wales, [Bottle feeding - Betsi Cadwaladr University Health Board \(nhs.wales\)](#), accessed 15/08/24.

<sup>135</sup> Public Health Agency, Bottlefeeding, [Bottlefeeding Final 0124.pdf \(hscni.net\)](#), accessed 19/08/24.

<sup>136</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp15, 23.

<sup>137</sup> CMA analysis of UK data: World Health Organization and the United Nations Children's Fund (UNICEF) (2022), [Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report](#).

<sup>138</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp18, 55.

<sup>139</sup> Healthcare professional groups we spoke to, see also: Feed's response to the CMA's invitation to comment, p1, The Food Foundation's response to the CMA's invitation to comment, p3, First Steps Nutrition Trust's response to the CMA's invitation to comment, pp5-6, Baby Milk Action's response to the CMA's invitation to comment, pp4-5.

certain standard but still see ‘fundamental’ differences between brands. It also found that parents using more expensive brands (which our consumer research found can be linked to guilt around formula use) were most likely to be sceptical that brands were largely the same, as were those who switched brands due to a reported feeding issue.<sup>140</sup> Reflecting these findings, Which? found that 78% of survey respondents thought there was a difference between products and Survey A found that 69% of mums surveyed believed there there was a difference between brands.

### **Information from manufacturers and retailers**

- 5.33 Parents may also receive or access information from manufacturers or retailers which can inform their choice of infant formula brand<sup>141</sup> as well as their perceptions of the brand as a whole. As detailed in Appendix B The consumer journey, sources of information include product labels, baby clubs and websites, social media, digital and search advertising, consumer reviews, and in-store information (eg shelf edge labelling, aisle fins, floor stickers, and baby events).
- 5.34 These can be helpful sources of information for parents when deciding which infant formula brand to choose. They can also be employed as marketing tools to build brand awareness and reputation and, as a result, support sales of products marketed under that brand. In general, brand building is a rational business behaviour that we observe across many markets, and to the extent that it highlights product features and differences, it can help inform consumer choice. For example, helping parents to understand whether a product is organic or not, or the provenance of ingredients.
- 5.35 When we asked respondents to our invitation to comment to provide their views on how parents choose a brand of infant formula and what factors influence their choice, several highlighted brand awareness and influence. For example, First Steps Nutrition Trust stated that ‘there is a large amount of research globally and from the UK which shows that the marketing of formula milk plays a role in influencing infant feeding decisions, including product choices’ and that ‘brand influence is exerted from marketing targeted to women from pregnancy onwards, e.g. through formula company ‘baby clubs’’.<sup>142</sup> Public Health Wales cited research which found that ‘Formula companies target pregnant women, with first time pregnant women being the “holy grail” in the knowledge that brand loyalty for subsequent babies is strong.’<sup>143</sup> Feed said that ‘While women and families are

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<sup>140</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp 27, 20.

<sup>141</sup> Noting that the advertisement of infant formula is restricted, and manufacturers told us they are aware of, and abide by, regulations relating to infant formula. We consider this further in Section 6 Impact of the regulatory framework and regime.

<sup>142</sup> First Steps Nutrition Trust on behalf of the Baby Feeding Law Group response to the CMA’s invitation to comment, p2.

<sup>143</sup> Public Health Wales response to the CMA’s invitation to comment, p4.



indeed susceptible to advertising via linked products and parenting clubs, product choices are made within the wider context of limited knowledge about formula products, and shame and stigma around the act of formula feeding.’<sup>144</sup>

- 5.36 While brand building can often usefully inform consumers of product features and differences, in this market we consider that the understandable difficulties parents have in assessing which product is best for their baby are exacerbated by manufacturers’ efforts to signal that certain products are superior, including through the connotation of intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products. We are therefore concerned that parents may put disproportionate weight on such signals of differences between products.
- 5.37 Added to this, and as we discuss later in this sub-section, parents are often vulnerable in this market. This can affect their ability to engage in the market and they may rely on shortcuts to make decisions. This, combined with the fact that the science behind these products is complex (see Section 4 Market Outcomes: Product differentiation), is likely to make signals of product superiority difficult to evaluate. As a result, brand awareness and reputation may play an outsized role in brand choice, with decisions not always based on clear, accurate and impartial information. This is particularly concerning given that once parents have chosen a brand, the evidence suggests that they are unlikely to switch (as noted in the sub-section ‘Brand loyalty and switching’ earlier in this section).

### **Consumer vulnerability**

- 5.38 Parents in this market may experience market-specific vulnerability and vulnerability associated with their personal circumstances. This can affect their ability to engage in the market and can lead to the use of ‘decision shortcuts’ to help determine which infant formula brand is ‘best’ for them.
- 5.39 Most parents experience a degree of market-specific vulnerability because most feeding decisions come with high pressure on a parent to do the best they can for their baby. Our consumer research found that ‘when it comes to choosing a brand for their infant, consumers want to purchase “the best” – whatever that means to them.’<sup>145</sup>
- 5.40 There is also evidence that parents who experience feelings of guilt around formula milk use are particularly vulnerable and therefore at risk of spending more than they need to.<sup>146</sup> Our consumer research identified a group of parents who

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<sup>144</sup> Feed’s response to the CMA’s invitation to comment, p2.

<sup>145</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p32.

<sup>146</sup> See the sub-section ‘Drivers of brand choice’ earlier in this section for a fuller discussion of the role of price in formula milk decisions.

held the view that 'infant formula is second best [to breastfeeding]'. It also found that the desire to purchase a premium brand is 'felt particularly strongly amongst mothers who had hoped to exclusively breastfeed. They have heard 'breast is best' and therefore feel even more guilt if they make a rational budgeting decision in their choice of formula brand.'<sup>147</sup>

- 5.41 The CMA's work on vulnerability has also highlighted 'time poverty' as a factor 'likely to affect consumers' ability to engage in certain markets'.<sup>148</sup> In this market, some parents do have time to plan but many others make decisions under time pressure. Survey A found that when asked to choose an option to describe best how they first made their brand choice, 45% of mums said they had 'thought a lot about brands', indicating that they viewed their decision as well-planned. 55% did not make such a well-planned decision, with 35% saying they had 'thought a little about brands' and 18% indicating that they did not make the decision themselves, either because it was an 'emergency choice', was 'given by hospital' or 'someone else chose it'.
- 5.42 Parents making unplanned decisions in hospital at birth are at particular risk of having neither the time nor circumstances conducive to well-informed decision-making. Our consumer research found that those who wanted and expected to breastfeed and who find out in hospital that they will have to partially or exclusively formula feed are usually extremely vulnerable, particularly if they have thought very little about formula choices. They are often under situational stress and experience feelings of guilt or failure around formula milk use.<sup>149</sup>
- 5.43 Parents who start using formula at some point in their child's first year may also be relatively vulnerable, particularly if their decision to use formula milk was unplanned and if they start using it in the weeks immediately following birth. In addition to the general pressure to do what is best for their baby, they may be turning to formula milk at short notice and/or when dealing with stressful situations. They also may not have planned to use formula milk and may experience feelings of guilt.<sup>150</sup>
- 5.44 Our consumer research explored how parents make a brand decision when they start using formula at home in the weeks following birth and found that 'consumers describe decision fatigue, and any decision shortcuts (like personal

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<sup>147</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp19, 38.

<sup>148</sup> Competition and Markets Authority (CMA) (2019), [Consumer Vulnerability: Challenges and Potential Solutions](#), p7

<sup>149</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p18.

<sup>150</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p13.

recommendations or word of mouth guidance) are welcomed and significantly impact the decision to use a specific formula'.<sup>151</sup>

5.45 First-time parents are more likely to experience difficulties in engaging with this market in ways conducive to making well-informed choices. Our consumer research found that first-time parents are less likely to have planned formula use and are less likely to share the mindset that 'a fed baby is a happy baby'.<sup>152</sup>

5.46 Turning to personal circumstances, we have found that incomes and mental health are particularly relevant when considering consumer vulnerability in the market for infant and follow-on formula. Specifically:

- Several studies have identified how the inability to afford formula milk can lead to unsafe feeding practices such as infants being underfed, fed inappropriately or formula being watered down. This was highlighted by the All Party Parliamentary Group on Infant Feeding and Inequalities in 2018 and subsequently in a report by the charity, Feed, in 2022.<sup>153</sup>
- NHS England has reported that 'Perinatal mental illness affects up to 27% of new and expectant mums and covers a wide range of conditions.'<sup>154</sup> Use of NHS perinatal mental health services is increasing, with more than 57,000 new and expectant mums in England receiving specialist support for mental health problems in 2023, up a third on 2022.<sup>155</sup>

### **Provisional conclusions on consumer behaviour**

5.47 The evidence we have reviewed shows that personal recommendations, followed by availability and visibility in-store, online presence, and visibility in hospitals are the key factors influencing parents' choice of infant formula brand. Brand awareness and reputation also influence brand choice and can come into play through each of these drivers of decision-making. Many parents use price as a proxy for quality and so actively choose higher priced products. Parents rarely switch brands unless they experience feeding difficulties.

5.48 Parents may receive or proactively access information to support their infant formula brand choice from health services, formula milk manufacturers and retailers, and other sources such as online forums, parenting websites, and word of mouth. We found that:

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<sup>151</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p20.

<sup>152</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp19-20.

<sup>153</sup> Feed (2022), [Access to infant formula for babies living in food poverty in the UK](#).

<sup>154</sup> NHS England states that perinatal mental health (PMH) problems are those which occur during pregnancy or in the first year following the birth of a child.

<sup>155</sup> NHS England Press Release (2024), [Record numbers of women accessing perinatal mental health support](#).

- While the NHS is a trusted source of information, it could do more to be a source of timely, clear, accurate and impartial information on formula feeding.
- Parents generally understand that all infant formulas must meet a certain standard but still see ‘fundamental’ differences between brands.
- Brand awareness and reputation may play an outsized role in brand choice, with decisions not always based on clear, accurate and impartial objective information. This is particularly concerning given the specific features of this market, including that once parents have chosen a brand, the evidence suggests that they are unlikely to switch unless their baby experiences feeding difficulties. Brand awareness and reputation may play an outsized role because:
  - While brand building can usefully often inform consumers of product features and differences, in this market we are concerned that parents may place disproportionate weight on signals of differences between products.
  - Parents are often vulnerable in this market and may rely on shortcuts to make decisions. This, combined with the fact that the science behind the product is complex, is likely to make signals of intangible, non-verifiable product superiority difficult to evaluate.
- Vulnerabilities can arise from market-specific factors such as parents experiencing feelings of pressure to do what is best for their baby and feelings of guilt associated with formula milk use. Vulnerabilities can also arise from personal circumstances such as low income or mental health issues. All of these vulnerabilities can affect parents’ ability to engage in this market and can lead to the use of ‘decision shortcuts’ to help determine which infant formula brand is ‘best’ for them.

## 6. Impact of the regulatory framework and regime

- 1.1 We have examined the impact of the regulatory framework (as described in Section 3 Market overview) on the market outcomes we have observed. We have focused in particular on Article 6 of Regulation 2016/127, which covers specific requirements on food information, and Article 10, which sets out restrictions for promotional and commercial practices. We did not seek to undertake a comprehensive assessment of compliance with the regulations per se.
- 6.1 To do this we reviewed responses to our information requests from manufacturers and retailers<sup>156</sup> and spoke with relevant stakeholders, including governments in the UK, Scotland, Wales and Northern Ireland, and enforcers of the regulations. We also reviewed relevant research, our consumer research and responses to our invitation to comment.

### Branding, labelling and cross-marketing

- 6.2 As we set out later in this section, personal recommendations, which can build brand awareness and reputation, are the key factor we identified influencing parents' brand choice. Similarly, visibility in-store, online, and in hospitals are also important factors driving infant formula brand choice and are also points at which parents may be directly or indirectly influenced by marketing activities seeking to build or maintain brand awareness and reputation.
- 6.3 Brands that have been active in the market for some time are likely to have built up brand awareness and reputation and so are likely to focus on maintaining this. Our analysis of World Health Organisation (WHO) data showed that Aptamil, Cow & Gate, and SMA had near universal awareness amongst those surveyed in the UK between October 2019 and March 2021. For newer brands such as Kendamil, for which just 24% of respondents said they had heard of the brand during this time period, the initial focus is likely to be building brand awareness and reputation.<sup>157</sup>
- 6.4 The evidence we have reviewed leads us to provisionally conclude that manufacturer marketing and promotional activities for adjacent products, such as follow-on formula, also supports sales of infant formula.<sup>158</sup> This is also known as a 'halo effect'.
- 6.5 Specifically, we found that promotional and marketing spend on follow-on formula and growing-up milks appears to be high, particularly if its main purpose is to

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<sup>156</sup> Sales of Lidl's Lupilu infant formula and follow-on formula commenced in August 2024. These products have not been included in the analysis set out in this section.

<sup>157</sup> CMA's analysis of UK data: WHO (2022): [Multi country study examining the impact of marketing of breast milk substitutes on infant feeding decisions and practices: commissioned report](#). Given Kendamil's growth in market share since 2021, we would expect its current brand awareness to be higher.

<sup>158</sup> All manufacturers told us that they were aware of and abided by the prohibition on advertising infant formula.

support sales of just these product categories. For Danone, promotional and marketing spend amounted to [10-20%] of total formula milk revenues in 2023,<sup>159</sup> and [20-30%] as a share of follow-on formula and growing-up milk revenues only. For Nestle, promotional and marketing spend<sup>160</sup> was almost [5-10%] of total formula milk revenues and [10-20%] of follow-on and growing-up milk revenues only. For Kendal, and HiPP, promotional and marketing spend was lower at [10-20%] and [5-10%] respectively, of follow-on and growing-up milk revenues only.

6.6 We consider that this level of spend is likely to support infant formula sales through brand awareness and reputation, as well as sales of those products being directly advertised (ie follow-on formula and growing-up milk), for two key reasons:

- Firstly, our consumer research found that parents who have used infant formula tend to stick with the same brand when moving to follow-on formula.<sup>161</sup> Therefore, advertising and marketing is unlikely to be persuading parents to switch brands at this point.
- Secondly, there are relatively few new consumers entering the market at the point at which follow-on formula or growing-up milks are appropriate for their baby. Survey evidence indicates that two-thirds of babies were already being fed formula at 4-5 months of age.

6.7 Furthermore, research commissioned by one manufacturer found that the majority of sales of infant formula were mainly 'baseline', that is the volume of sales expected in the absence of any marketing and influenced by seasonality, brand equity and market factors, between January 2020 and March 2023. However, this research found that marketing investments in TV and video-on-demand for follow-on formula had driven an incremental increase in some infant formula sales. The same research found that investments in paid search and display across all formula milks had a halo impact on some infant formula sales. Turning to another brand, internal documents analysing the impact of media spend on sales using data from January 2017 to December 2019 indicate that media for some formula milk products has a halo effect on the entire portfolio of formula milk products. Both manufacturers told us that this does not reflect the views or practices of their businesses.

6.8 Our analysis of WHO survey data also indicates that parents are receiving marketing messages, which either relate to formula milk brands or were perceived to be about infant formula specifically. Eighty-four percent of pregnant and postnatal women surveyed in the UK between 2019 and 2021 reported seeing or hearing formula milk marketing in the preceding year. Of these, 54% thought that

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<sup>159</sup> Total formula milk revenues includes infant formula, follow-on formula and growing-up milk revenues.

<sup>160</sup> Nestle noted that the marketing spend here includes [X].

<sup>161</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp46-47.

they had seen an advertisement for follow-on formula and 25% for infant formula. Of those reporting seeing an advert for infant formula, 65% said they saw it on TV, 20% on social media, and 6% on YouTube.<sup>162</sup>

- 6.9 In our view, a key reason for the particularly strong focus on brand awareness and reputation in this market is the regulatory restriction on the advertisement and promotion of infant formula, including the promotion of price reductions and the prohibition on the use of health and nutrition claims on labelling. These factors, combined with consumers' weak responsiveness to price, lead to weak incentives for manufacturers to compete on price and a particularly strong focus on brand building. The policy goal to not discourage breastfeeding underpins these regulations, but to compete effectively a business typically needs consumers to have a certain level of awareness of its products and their features. Therefore, in a situation where the advertisement of the products and certain product features is restricted, it is logical manufacturers will seek other ways to bring about a level of awareness of their products.
- 6.10 However, given the specific features of this market we are concerned that, since parents may be vulnerable and may use shortcuts to make decisions (as discussed in Section 5 Consumer behaviour), brand influence may play an outsized role in decision-making. As noted in Section 4 Market outcomes: Product differentiation, we also consider that the difficulties parents may have in assessing product differences are exacerbated by manufacturers' efforts to signal certain products are superior, including through the connotation of intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products, even in the face of government policy and legislation that requires all products to be suitable for meeting the nutritional needs of babies to support healthy growth and development.
- 6.11 One area where we have observed cross-marketing is in the similar branding and labelling used across formula milks sold under particular brands and sub-brands. We consider that all the brands and sub-brands supplied in the UK by the four largest manufacturers use similar branding and labelling.<sup>163</sup> Figure 6.1 provides two examples of this. Formula milks in the HiPP Organic range all use a white and green colour palette, with similar fonts and nature-focused pictures. They also all carry the same brand name.<sup>164</sup> Similarly, Danone uses a blue and white colour palette with a more clinical and science-focused theme across the formula milks in

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<sup>162</sup> CMA analysis of UK data: WHO: Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report and UNICEF (2022), [How the marketing of formula milk influences our decisions on infant feeding](#), pp4-6; WHO and UNICEF (2022), [Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report](#) The research did not identify whether the infant formula adverts respondents reported seeing were likely to have breached the regulations or were actually adverts for other formula milks.

<sup>163</sup> Danone (Aptamil, Aptamil Advanced, Cow & Gate), Kendal (Kendamil) Nestle (SMA, SMA Advanced and Little Steps) and HiPP.

<sup>164</sup> HiPP Organic, Shop HiPP Formula Milks [Shop HiPP Formula Milks - Formula Milks | HiPP Organic Shop](#), accessed 18/07/24.

both its Aptamil and Aptamil Advanced ranges. These ranges also carry the same name and logo.<sup>165</sup>

Figure 6.1 HiPP Organic and Aptamil formula milk powder ranges, front of pack labels



Source: HiPP and Danone

6.12 Given that the regulations restrict the advertisement of infant formula and require infant formula and follow-on formula to be clearly distinct from each other, in part to prevent cross promotion and the indirect marketing of infant formula by advertising a product that looks almost identical,<sup>166</sup> we undertook a more detailed assessment of a sample of brand labels.<sup>167</sup>

<sup>165</sup> Aptaclub, Aptamil Formula Milks, [Aptamil Range | Infant Formula Milk | Aptaclub](#), Aptamil Advanced [Aptamil® Advanced Product Range | Baby Milk Formula | Aptaclub](#), accessed 18/07/24.

<sup>166</sup> Commission Delegated Regulation (EU) 2016/127, Article 6(6) and 10. DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 20/07/24.

<sup>167</sup> We assessed a sample of labels against DHSC guidance and our interpretation of the regulations.



6.13 From carrying out this review, we have concerns that the branding, labelling, and packaging of infant formula and follow-on formula products appear to be very similar, although there was some variation between products to indicate the ‘stage’ the formula milk was suitable for. Our review examined labels from several brands, with two illustrative examples set out in Figure 6.2 below. Although it would be for the courts to determine whether there has been any breach of the law, we have concerns as to whether the products we examined comply with the regulations<sup>168</sup> and associated DHSC guidance requiring infant formula and follow-on formula to be clearly distinct. The lack of clear distinction we have observed between these two products strongly supports the cross promotion of infant formula.<sup>169</sup>

**Figure 6.2: Infant formula and follow-on formula powder front of pack labels, Kendamil and SMA**



<sup>168</sup> [Commission Delegated Regulation \(EU\) 2016/127](#), Article 6(6). DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 20/07/24.

<sup>169</sup> We did not seek views in our ITC on whether consumers are buying the incorrect product for their baby’s age because infant formula and follow-on formula packaging looks overly similar, but some stakeholders did raise this as a concern.



Source: Kendal and Nestle

- 6.14 Concerns about cross-promotion were also raised in response to our invitation to comment. For example, First Steps Nutrition Trust stated that ‘cross-promotion is widespread, characterised by marketing which makes the formula brand and/or other products (Follow-on formula/Growing-up milks) the focus. Cross-promotion has been documented as a common practice to circumvent national legislation limiting marketing of infant formula.’<sup>170</sup> Feed noted that ‘[f]ormula manufacturers can fill the information vacuum around formula products themselves, influencing consumers directly via the promotion of follow-on milks... and parent clubs, and indirectly by inferring product superiority through price signalling.’<sup>171</sup> Similarly, the WHO concluded that, in the eight countries it looked at (which included the UK), infant formula is typically marketed under the same umbrella and shelved alongside milks for older children, benefiting from brand recognition.<sup>172</sup>
- 6.15 Based on this evidence, we are concerned that similar branding and labelling across formula milk ranges may raise brand awareness through the marketing and advertising of follow-on formula and growing-up milks. As a result, parents who are likely to be vulnerable and to rely on shortcuts may purchase more expensive infant formula products than they may have otherwise done, particularly had they had access to timely, clear, accurate and impartial information.
- 6.16 We note that the NHS states that ‘research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to

<sup>170</sup> First Steps Nutrition Trust on behalf of the Baby Feeding Law Group UK’s response to the CMA’s invitation to comment, p13.

<sup>171</sup> Feed’s response to the CMA’s invitation to comment, p7.

<sup>172</sup> WHO (2022): [Multi country study examining the impact of marketing of breast milk substitutes on infant feeding decisions and practices: commissioned report](#), p22.

have first infant formula as their main drink until they are 1 year old.<sup>173</sup> Thereafter, babies can start to drink whole cows', sheep or goats' milk. Follow-on formula is only slightly cheaper (on average) than infant formula, but its presence in the UK market means that advertisement of follow-on formula can indirectly boost infant formula sales.

## On-pack messaging

- 6.17 Another way in which manufacturers seek to brand build and differentiate themselves, notwithstanding the restrictions on the advertising of infant formula and prohibition on the use of health and nutrition claims, is through on-pack messages.
- 6.18 Our detailed assessment of a sample of brand labels identified the inclusion of a range of such messages. Some of these are likely to help parents choose a brand based on clear preferences and are relatively easy to interpret and in some cases verify. For example, messaging around the provenance of ingredients, organic ingredients, or the absence of palm oil. We would typically encourage competition on product features such as these.
- 6.19 However, as discussed in Section 4 Market outcomes: Product differentiation, we have seen examples of other messages that signal a product is differentiated from others on the market, connote intangible and/or non-verifiable benefits, and may be difficult for parents to interpret or assess (including in terms of how much value to place on them). For example:
- Aptamil First Infant Milk 800g contains the message 'Inspired by 50 years of research in early life science'.
  - Kendamil Classic First Infant Milk 800g states that 'With over 60 years' expertise in infant nutrition.'
  - SMA First Infant Milk states that it has been 'leading baby nutrition for over 100 years'.
  - Some brands/sub-brands use the term 'Advanced'.
- 6.20 We have also seen the same or similar messaging on follow-on product packs. For example:
- Aptamil Follow-on Milk 800g contains the message 'Inspired by 50 years of breastmilk research'.

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<sup>173</sup> NHS, [Types of formula milk - NHS \(www.nhs.uk\)](https://www.nhs.uk), accessed 02/10/24.

- Kendamil Classic Follow-on Milk 800g states that ‘With over 60 years’ expertise in infant nutrition.’
- SMA Follow-on Milk 800g states that it has been ‘pioneering infant nutrition since 1919, using over 100 years of expertise’.

- 6.21 On-pack messaging can be persuasive. Our consumer research found that such product claims can be impactful, particularly amongst parents who feel guilty about using formula. It also found that packaging and claims of formula brands are likely to implicitly influence parents. Further, our consumer research found that where parents associate brands with a higher price point as being ‘premium products’, three factors underpinned this perception: (i) reputation; (ii) packaging (the ‘look and feel’ and information on the packaging); and (iii) brand messaging (eg about manufacturing, nutrition, or awards).<sup>174</sup>
- 6.22 Whether the messages we observed comply with the regulations and are therefore permitted on infant formula labels turns on whether they are considered ‘health and nutrition’ claims,<sup>175</sup> which are prohibited, or whether they are likely to constitute other information (which is not prohibited) or advertising (which is not allowed other than in particular publications).
- 6.23 While we have not undertaken a comprehensive assessment, we found what appeared to be broad compliance with the requirement not to include health or nutrition claims on infant formula packaging.
- 6.24 Regulatory compliance aside, we are concerned that some on-pack messaging, particularly messages such as those outlined earlier in this section which are hard to interpret, may explicitly or implicitly influence parents’ perceptions of a product by ‘signalling’ trustworthiness and superiority at a time when they are vulnerable and reliant on shortcuts to choose an infant formula brand. This may lead them to purchase more expensive infant formula products than they might otherwise have done.
- 6.25 We consider that one of the drivers for the inclusion of the on-pack messages we have observed are the regulatory prohibitions on the use of health and nutrition claims on infant formula labels and restrictions on the advertising of infant formula. It is logical that in this situation manufacturers will seek to signal to parents how their product is superior in other ways, such as through on-pack messaging that connotes intangible and/or non-verifiable benefits.

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<sup>174</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp44-45.

<sup>175</sup> Health claims and nutrition claims are defined in [Regulation \(EC\) 1924/2006](#) which also sets out conditions for the use of such claims and mandates that the appropriate health authority (being DHSC) shall maintain a register of authorised health and nutrition claims. Please see Appendix A Regulatory and policy framework for further information.

## The feeding journey

- 6.26 Another message we identified on formula milk labels is the ‘stage’ the product is suitable for. Infant formula is typically labelled as ‘stage 1’, follow-on formula as ‘stage 2’ and growing-up milks as ‘stage 3’ and ‘stage 4’. Importantly, this labelling helps parents identify which formula milk is suitable for the age of their baby.
- 6.27 However, we have heard concerns in response to our invitation to comment that ‘consumers are led to believe that they must progress through ‘stages’... when the only necessary product is infant formula for use from 0-12 months’<sup>176</sup> and that ‘buy-in to so called follow-on products is sought long beyond the initial 12 months...through strategies such as suggesting that a company’s next product is a natural progression’.<sup>177</sup> This is despite NHS advice that infant formula can be consumed throughout a baby’s first year and that ‘When your baby is 1 year old, they can start to drink whole cows’ milk or sheep’s or goats’ milk (as long as these milks are pasteurised).’<sup>178</sup> The positioning of formula milk ranges next to each other in-store and online may also encourage parents to move through a ‘feeding journey’.
- 6.28 We would like to understand from stakeholders the value derived from follow-on formula for a) parents and b) manufacturers and retailers given the NHS advice outlined earlier in this section and that follow-on and infant formula are similarly priced (or follow-on formula cheaper in some cases).
- 6.29 We also note that parents may be encouraged to move through a feeding journey and purchase growing-up milk without realising that cow’s milk is a suitable alternative. These parents are then paying a price premium. We have estimated that families could save approximately £140 to £330 (depending on brand of growing-up milk) over the course of a year, by feeding their toddler cow’s milk instead of growing-up milk.<sup>179</sup>
- 6.30 While a relatively high proportion of parents use follow-on formula, the proportion that use growing-up milk is much smaller. The total spend on follow-on formula was 23% of all formula milks in the first seven months of 2024. The equivalent figure for growing-up milk was 14% of all revenue spent on formula milks.<sup>180</sup> Reflecting this, one study found that 39% of parents were using follow-on formula

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<sup>176</sup> First Steps Nutrition Trust on behalf of the Baby Feeding Law Group UK’s response to the CMA’s ITC, page 3.

<sup>177</sup> University of Liverpool response to the CMA’s ITC, page 10.

<sup>178</sup> NHS, [Types of formula - NHS](#), accessed 23/07/24.

<sup>179</sup> CMA’s analysis comparing the cost of a year’s supply of growing-up milk (of each brand available at Tesco) to that of Tesco’s own-label whole cow’s milk (4 pint bottle), based on Tesco’s online prices as of 29 August 2024, excluding any promotions or Clubcard pricing. The calculation assumes a toddler being fed the amount of growing-up milk recommended per day on the packaging (which varies by brand, from 300-400ml), versus 350ml cow’s milk per day (as recommended by the NHS ([What to feed young children - NHS \(www.nhs.uk\)](#), accessed 17/10/24)). Comparing organic brands of growing-up milk (HiPP Organic and Kendamil Organic) to Tesco own-label organic cow’s milk (4 pint bottle) on the same basis, families could save approximately £50 to £200 over the course of a year.

<sup>180</sup> CMA’s calculations based on manufacturers’ sales revenue data.

when their babies were between 7 and 12 months of age and 19% were using growing-up milk when their toddlers were between 13 and 24 months of age.

## Price promotions

- 6.31 A further area where the regulatory framework affects competition in this market relates to price promotions. Specifically, restrictions on price promotions for infant formula, whether real or perceived due to a lack of clarity on the interpretation of the regulations, may be softening competition on price and increasing the emphasis placed on non-price competition.
- 6.32 DHSC explained to us that legislation does not prevent infant formula manufacturers or distributors from reducing the price of infant formula. However, promotional activities around price reductions may be seen as an inducement to purchase infant formula. The regulations state that ‘There shall be no point of sale advertising...to induce sales of infant formula directly to the consumer at the retail level, such as...special sales, loss leaders’ and ‘Manufacturers and distributors of infant formula shall not provide...free or low-priced products...’ and DHSC guidance explains that this could include price reductions, discounts or mark-downs.<sup>181</sup>
- 6.33 However, in our view, it may be difficult to draw a clear line around when informing consumers about a price reduction is likely to be promotional. For example, there are instances when a price reduction is clearly a promotion, such as a time-limited discount promoted on an in-store and online banner. In other cases, it may be more difficult to determine what may be considered an inducement to purchase infant formula and therefore promotional; for example, it is not clear whether a retailer that reduced the retail price of infant formula for a sustained period due to a cost price reduction would breach the regulations if they were to publicise this.
- 6.34 There have been calls for changes to these aspects of the regulations to support parents with the cost of infant formula. For example, a campaign by the Metro and Feed, and supported by Iceland, called on the government to allow retailers to tell the public when they reduce the price of infant formula. It also called for customers to be allowed to pay for infant formula with loyalty points, grocery vouchers, and store gift cards.<sup>182</sup> Specifically, Iceland felt that it should not have been asked to stop informing parents that it had reduced the price of infant formula, and was clear that the law was making it hard for Iceland to inform parents that it was offering savings on the products they need.<sup>183</sup>

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<sup>181</sup> [Commission Delegated Regulation \(EU\) 2016/127](#), Article 10(3). Department of Health and Social Care (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 24/07/24

<sup>182</sup> Feed, [Formula for change](#), [Formula for Change — feed \(feeduk.org\)](#), accessed 24/07/24.

<sup>183</sup> Iceland, [It's time to change the law on infant formula](#), accessed 21/08/24.

- 6.35 Given that retail price promotions typically increase price competition, there is a case for revising regulations which restrict price promotions relating to infant formula to allow for this. The core aim of legislative restrictions on advertising (not just in relation to price) is to avoid inducing the purchase of infant formula so as not to discourage breastfeeding and we acknowledge that there are likely to be concerns about loosening these rules. Indeed, the DHSC told us that there is considerable evidence (which underpins the WHO Code) which shows that advertising directly to the consumer and other marketing techniques negatively influences parents and caregivers in their decision on how to feed their infants and for this reason specific restrictions are laid down in legislation on advertising and marketing techniques.
- 6.36 However, the evidence we reviewed found that a high proportion of expectant mothers intend to breastfeed and that doing what is viewed as best for their baby was the overriding motivator for parents in their decisions between breast milk and formula. For example, our analysis of WHO survey data found that 84% of respondents in the UK who were pregnant planned only to breastfeed their baby following the first two weeks of birth.<sup>184</sup> In addition, Survey A found that mums planning to breastfeed exclusively at birth (ie the majority of pregnant women and including those who intended to breastfeed but didn't go on to do so) were very strongly motivated by their infant's health. 80% cited 'breastmilk is more nutritious' and 73% cited 'breastmilk is better for immunity' as reasons why they were planning to breastfeed. Despite breastfeeding being a very low-cost option compared to formula milk, only 23% gave 'formula milk too expensive' as a reason for breastfeeding. As such, we believe there is a case for revising the regulations which restrict price promotions.

### **Engagement with healthcare professionals**

- 6.37 Most manufacturers engage with healthcare professionals, although some to a greater extent than others (and levels of engagement have varied over time) and through different mediums. Nestle, for example, told us that it has a responsibility to share the latest product information with healthcare professionals, so they have all the facts to enable them to give parents accurate, objective and consistent advice on feeding choices.<sup>185</sup>
- 6.38 During our market study examples of engagement with healthcare professionals we have seen include: professional development training such as webinars for pharmacy staff in retail settings on specific (non-branded) categories of products; continuous professional development for healthcare professionals on the

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<sup>184</sup> CMA's analysis of UK data: World Health Organization and the United Nations Children's Fund (UNICEF) (2022), [Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report](#). Fieldwork took place between October 2019 and March 2021.

<sup>185</sup> Nestle's response to the CMA's invitation to comment, page 9. Nestle also explains that in doing so, it complies with the applicable legal and regulatory framework.

management of issues like infant reflux, and leaflets providing information for healthcare professionals to give to parents, where they deem this appropriate, to help them manage their baby's reflux (which includes information about, and an image of, a brand of anti-reflux formula); attendance at seminars and conferences for healthcare professionals; adverts for products which noted that these were available to purchase through NHS supply chain; and, for the use of healthcare professionals only, the provision of data cards conveying product information and a presentation deck on formula milk product ranges. Most manufacturers also provide information to healthcare professionals through dedicated websites.<sup>186</sup>

- 6.39 There are regulations in place that restrict the advertising of infant formula to publications specialising in baby care and scientific publications and specify that such information shall contain only information of a scientific or factual nature.<sup>187</sup> Regulation 2016/127 also requires that donations of information or educational equipment or materials shall only be made on request and with the prior written approval of the appropriate authority or within guidelines given by that authority for this purpose.<sup>188</sup>
- 6.40 We have not sought to assess whether any of the communications we have seen could be considered to be controlled by these regulations and, if they were, whether they are likely to be compliant. We have however heard mixed views on whether healthcare professionals are receiving marketing from manufacturers which governments may wish to consider.
- 6.41 Specifically, we have heard that the UNICEF Baby Friendly Initiative may be limiting information given out to patients in hospitals (see Section 7 Competition in the market). We have also heard that healthcare professionals will apply their professional judgement to any communications.<sup>189</sup> However, concerns were raised by some respondents to our invitation to comment. For example, the Baby Feeding Law Group told us that 'healthcare professionals are subject to marketing, which is undertaken in a variety of ways, including adverts in journals (Hickman et al, 2021) and sponsored conferences.'<sup>190</sup> Public Health Wales also told us that it 'considers that formula manufacturers do engage with healthcare workers with the aim of affecting consumer outcomes. The Baby Friendly Initiative mitigates this in some settings.'<sup>191</sup>
- 6.42 Conversely, we were told that constraints on communications with healthcare professionals were limiting competition. One stakeholder told us that restrictions on communications with healthcare professionals created a barrier to entry,

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<sup>186</sup> For example: [Homepage | SMA Nutrition | SMA HCP and Healthcare Professionals \(hipp.co.uk\)](#), accessed 17/10/24.

<sup>187</sup> [Commission Delegated Regulation \(EU\) 2016/127](#)

<sup>188</sup> [Commission Delegated Regulation \(EU\) 2016/127](#), Article 11(3). The appropriate authority in England is DHSC.

<sup>189</sup> Nestle's response to the CMA's invitation to comment, page 9

<sup>190</sup> First Steps Nutrition Trust on behalf of Baby Feeding Law Group's response to the CMA's invitation to comment, p5.

<sup>191</sup> Public Health Wales' response to the CMA's invitation to comment, p9.



particularly given that older brands had in the past been able to engage with healthcare professionals to a greater extent.<sup>192</sup>

## **Compliance and enforcement**

- 6.43 As we have set out above, in our view there are some provisions of Regulation 2016/127 which appear to be underenforced or where greater clarity on their interpretation is required. Addressing this would help ensure that businesses operate on a level playing field. It would also help ensure that, if taken forwards, any remedy options relating to the regulatory framework we propose, in Section 8 Possible measures to address our emerging concerns, are effective.
- 6.44 Here we set out the main reasons which help to explain the underenforcement and lack of clarity we have observed.

### **Competent authority's role**

- 6.45 We are concerned that limitations in the way the competent authority's role operates when infant formula products are placed on the market, are exacerbating our concerns regarding under-enforcement. This issue came to our attention in relation to the lack of distinction between infant and follow-on formula labelling we have identified.
- 6.46 Currently infant formula products may be placed on the market as soon as notification has been given by manufacturers to the competent authority and it is the responsibility of individual businesses to ensure their compliance with the law.<sup>193</sup>
- 6.47 However, in our view, the absence of a pre-authorisation process means that products can be placed on the market before the competent authority has reviewed the material submitted which may reveal concerns about regulatory compliance. As such, while the notification process is helpful in reducing possible breaches of the regulations, we consider that, in practice, a manufacturer might place a product on the market in respect of which a competent authority has concerns. We note that the enforcement of Regulation 2016/127 is a separate process, usually carried out by local authorities.

### **Trading standards services**

- 6.48 Local authority trading standards services are typically the designated enforcer of the relevant regulations.<sup>194</sup> Their role is to monitor and address potential non-compliance with the regulations. Concerns about potential non-compliance may

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<sup>192</sup> See discussion on barriers to entry in Section 7 Competition in the market.

<sup>193</sup> [DHSC \(2013\), Guidance on Regulation 2016/127](#)

<sup>194</sup> For Northern Ireland, we understand this role is performed by Northern Ireland Trading Standards Services.

stem from DHSC's review of a label when a product is placed on the market, or may arise subsequently.

- 6.49 In evidence-gathering calls with some trading standards services with manufacturers located in their areas, we found that a key barrier to monitoring and/or addressing potential non-compliance with the regulations was that trading standards services must carefully prioritise their resources. Some also told us that they have not received a significant number of complaints from the public. Illustrating this, one trading standards service pointed out that they have limited resources and therefore will take action in accordance with enforcement priorities, and have a focus on areas like doorstep crime and product safety. They have also, in general, received few complaints from the public about infant formula.<sup>195</sup> Rather, it is competitors that are more likely to submit complaints (although complaint numbers were still relatively low). As such, enforcement in this area is not a high priority.
- 6.50 We also found some evidence of challenges interpreting particular provisions of Regulation 2016/127. One example of this relates to the requirement for infant and follow-on formula packaging to be sufficiently distinct from one another. Another relates to challenges determining what constitutes advertisement in this context. A lack of clarity in how the provisions of Regulation 2016/127 should be interpreted may result in inconsistent and/or lower levels of enforcement.

### **Advertising Standards Authority**

- 6.51 Another area where possible underenforcement was brought to our attention relates to the regulation of the promotion and marketing of infant formula by the ASA through its administration of the CAP and BCAP Codes.
- 6.52 The ASA has adjudicated on complaints relating to the promotion and marketing of infant formula products. It told us it had investigated 47 discrete advertisements relating to infant formula in the past two years. For example, it ruled that several advertisements had the effect of one or more of the following: marketing infant formula; confusing infant formula and follow-on formula; discouraging breastfeeding; making health claims for infant formula and follow-on formula and making disease treatment claims (all of which breached the CAP Code).<sup>196</sup>

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<sup>195</sup> We note that the lack of complaints from members of the public may partly be as a result of a lack of knowledge of the detail of the relevant regulations.

<sup>196</sup> Examples include advertisements for infant formula on Kendal Nutricare's LinkedIn page and an in-app advertisement on the Candy Crush game ([ASA Ruling on Kendal Nutricare - 05/04/2023](#)); an advert on Kendal Nutricare's website which featured customer submitted reviews which were adjudged to advertise infant formula and confuse between infant formula and follow-on formula as well as making a health claim ([ASA Ruling on Kendal Nutricare - 04/08/2021](#));

Other rulings relate to a podcast advertisement for Cow & Gate Baby Club which was subsequently discussed on another podcast and made a health claim and confused between infant formula and follow-on formula ([ASA Ruling on](#)

- 6.53 However, the ASA informed us that it has experienced difficulties interpreting what constitutes ‘advertising’ for the purposes of Regulation 2016/127, given that there is no clear definition in the legislation. The CAP Code on the other hand, which seeks to reflect the regulations, arguably takes a more permissive approach and would likely deem a wider range of communications as advertising compared to Regulation 2016/127 and DHSC guidance.
- 6.54 This lack of clarity has particularly come to light when the ASA has been considering the content of formula milk manufacturer websites, although it also extends to online retailing and trade before the retail stage eg manufacturer communications with retailers. As a further example, the ASA informed us that they consider that it is not clear whether baby clubs would fall within the exemption in Regulation 2016/127 which allows advertising of infant formula in ‘publications specialising in baby care’.
- 6.55 While the ASA acknowledged a need to be pragmatic to ensure that selling infant formula isn’t made practically impossible, this lack of clarity had made it challenging to monitor and ensure compliance with the CAP Code. As a result, the ASA has referred potential concerns relating to infant formula to Trading Standards as the designated statutory enforcement authority, instead of investigating and acting itself.
- 6.56 We also note that DHSC guidance on Regulation 2016/127<sup>197</sup> contains limited information around how advertising restrictions might apply to modern forms of communication such as social media and influencers. Our analysis of World Health Organisation survey data for the UK found that 22% of respondents placed ‘social media’ in the top three most useful sources of information about feeding their baby or infant that they have used/use.<sup>198</sup>
- 6.57 A further area where some underenforcement may exist relates to digital search advertising and some adverts served by manufacturers in response to keyword searches by parents. As set out in Section 5 Consumer behaviour, recommendations were the key factor influencing parents’ choice of infant formula brand however, online presence also played a role and is one channel through which brand awareness and reputation can be raised.
- 6.58 Digital search advertising is where an advertiser pays for its advert (typically in the form of a text link) to appear next to the results from a consumer’s search on an internet search engine, although adverts may also appear in other forms of search,

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[Nutricia Ltd - 23/02/2022](#)); and four paid-for Google ads for Boots which referenced several different brands of infant formula ([ASA Ruling on Boots - 23/08/2023](#)).

<sup>197</sup> DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 11/09/24.

<sup>198</sup> CMA’s analysis of UK data: World Health Organization and the United Nations Children’s Fund (UNICEF) (2022), [Multi-country study examining the impact of marketing of breast-milk substitutes on infant feeding decisions and practices: commissioned report](#).

for example on maps. The selection and targeting of these adverts are based primarily on keywords entered by the user.<sup>199</sup>

- 6.59 Digital search advertising is a well-established marketing method, and it is unsurprising therefore that most formula milk manufacturers told us that they engage in strategies like search engine optimisation and pay per click online advertising. That said, these manufacturers also indicated that they do not promote or advertise their first infant formula products to the general public as part of their digital marketing activities. Two manufacturers proactively stated that this was in line with regulatory requirements.
- 6.60 However, during our market study it has come to our attention that a small number of sponsored adverts for three brands served in response to key word searches such as 'baby milk' on popular search engines like Google and Bing explicitly reference infant formula. Although we did not undertake a comprehensive assessment, these adverts may be restricted by Regulation 2016/127 as the references to infant formula could constitute advertising. However, we note that the definition of advertising for the purposes of Regulation 2016/127 is not clear in DHSC guidance.
- 6.61 Most retailers told us they do not pay for paid for sponsored search results that link to pages where infant formula can be purchased. Of those, several proactively noted that they didn't engage in this activity because of regulations.
- 6.62 To conclude, we have seen some examples of digital advertising in respect of which we have concerns about compliance with the restrictions on the advertising of infant formula. However, we have not seen evidence of widespread non-compliance. While important for businesses from a level playing field perspective, addressing any compliance concerns is unlikely to significantly dampen brand awareness and reputation amongst parents. This is because adverts served in response to searches such as 'best baby milk' will often serve adverts for manufacturer websites and baby clubs, so highlighting brand names and messaging about product offerings to parents.

### **Provisional conclusions on regulatory framework and regime**

- 6.63 In this market, the regulatory framework, which is designed to support important public health goals, has a considerable bearing on competition and the outcomes we have observed.
- 6.64 To avoid inducing the purchase of infant formula, so as not to discourage breastfeeding, the advertising of infant formula is restricted, as are other promotional and certain commercial activities. Since price reductions cannot be

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<sup>199</sup> CMA (2020), [Online platforms and digital advertising, market study final report](#), p59.

promoted, this is one of the factors softening competition on price. We consider that there may also be some uncertainty around the boundaries of these restrictions. We believe there is a case for revising regulations that may restrict price promotion, or at least for updating the relevant guidance to make clear that promoting a long-term/base price reduction would not fall foul of the regulations.

- 6.65 In this market, manufacturers place a particularly strong emphasis on brand building to support sales of infant formula. In our view, a key reason for this is the regulatory restriction on the advertisement and promotion of infant formula, including the promotion of price reductions and the prohibition on the use of health and nutrition claims. These factors, combined with consumers' weak responsiveness to price, lead to weak incentives for manufacturers to compete on price. It is logical that, with these regulatory restrictions in place, manufacturers will seek other ways to bring about a level of awareness of their products and signal points of differentiation.
- 6.66 We have observed this in the similarity of a brand's labelling across stages (infant formula, follow-on formula, and growing-up milk). Brand building activities are also, in our view, likely to be focused on first-time parents given the short time for which they are in the market and parents' reluctance to switch once they have chosen a brand.
- 6.67 We have observed that manufacturers also seek to brand build through on-pack messaging signalling intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products. Our consumer research found that these messages can be persuasive.<sup>200</sup> While we have not comprehensively assessed all on-pack messaging, we found what appeared to be broad compliance with the prohibition on the use of health or nutrition claims on infant formula packaging. Regulatory compliance aside, while some of these messages may be helpful to parents when making a brand choice (eg whether a product is organic or the provenance of ingredients) we are concerned that others, such as 'inspired by 'research'' or 'advanced' may be difficult to interpret – including in terms of how much value to place on them – and verify, and yet are influential in decision-making.
- 6.68 Finally, we consider that underenforcement and a lack of clarity in relation to some aspects of Regulation 2016/127 is contributing to suboptimal consumer outcomes. Areas of the regulatory framework where we have identified underenforcement and a lack of clarity include:
- A lack of clarity around when, if at all, retailers may publicise reductions in the price of infant formula.

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<sup>200</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp44-45, 53.

- A lack of clarity between what constitutes 'information' and 'advertising', and how the existing regulations apply to online 'advertising'.
- There appears to be underenforcement, at present, of the regulatory requirement for a distinction between infant and follow-on formula labelling.
- With regards to communications from manufacturers to healthcare professionals, governments may wish to consider the mixed evidence we have observed with regards to regulatory compliance.

## 7. Competition in the market

7.1 In this section we set out our analysis of the nature and degree of competition in the market, also taking into account evidence from the preceding sections relating to market concentration, prices, margins, the regulatory framework, and consumer behaviour. We examine:

- (a) Barriers to entry and expansion
- (b) Competition between manufacturers
- (c) Competition between retailers

### Barriers to entry and expansion

7.2 Barriers to entry and expansion are factors that prevent, or make difficult, firms' entry or expansion in a market. These factors give incumbents an advantage and can reduce competition in a market.

7.3 In order to explore the main barriers to entry and expansion in formula milks, we gathered information from manufacturers currently supplying formula milks in the UK, manufacturers currently supplying formula milks in other countries and/or other infant feeding products in the UK, retailers, and other organisations with knowledge of the industry such as charities and healthcare bodies. We gathered this information via RFI responses and other written submissions, calls with stakeholders, and our review of internal documents submitted by manufacturers and retailers.

7.4 This sub-section discusses our main findings with respect to: (i) shares of supply; (ii) entry and exit; (iii) key barriers to entry and expansion; and (iv) supply to the NHS; before summarising our provisional conclusions on how barriers to entry and expansion affect competition in the supply of infant formula and follow-on formula.

### Findings

#### Shares of supply

7.5 As set out in Section 4 Market outcomes, the supply of formula milks in the UK is highly concentrated, with just three manufacturers (Danone, Kendal, and Nestle) accounting for [90-100%] of the share of supply of infant formula, and [90-100%] of follow-on formula, by revenue in the first seven months of 2024.<sup>201</sup> While the entry and growth of Kendamil since 2016 (discussed further below) is a significant

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<sup>201</sup> For further detail on shares of supply, including by brand and over time, see Section 4 Market Outcomes: Shares of supply.

development to the structure of the market, and has reduced the overall level of concentration, nevertheless it is clear that a high degree of concentration has persisted over many years.

- 7.6 One manufacturer characterised the infant formula market in the UK as having been static and entrenched for decades (prior to the launch of Kendamil), with Danone remaining the largest manufacturer, and any potential newcomers facing high barriers to entry. A retailer told us that Danone accounts for a total share of the baby and toddler feeding category<sup>202</sup> of around 70% and has done for several years.

### Entry and exit

- 7.7 The CMA is aware of five examples of firm-level entry in the supply of formula milks in the UK within the past ten years: (i) Kendal Nutricare, which entered in 2016 and supplies the 'Kendamil' brand of infant formula, follow-on formula, and growing-up milk; (ii) Aldi, which entered in 2016 and currently supplies the own-label 'Mamia' brand of infant formula (produced for Aldi by a contract manufacturer, [redacted]); (iii) Sainsbury's, which entered in 2018 with an own-label 'Little Ones' infant formula and follow-on formula (produced by [redacted] as a contract manufacturer), but exited entirely in 2020; (iv) Arla, which entered in 2018 [redacted] of an infant milk powder sold direct to consumers (ie not via retailers), but ended the [redacted] after less than a year due to [redacted]; and (v) Lidl, which entered in August 2024 with an own-label 'Lupilu' infant formula and follow-on formula (produced for Lidl by a contract manufacturer, [redacted]).<sup>203</sup>
- 7.8 Kendal's share (by revenue) in infant formula has grown substantially, from [0-5%] in 2019 to [15-20%] in 2023, to [20-30%] in the first seven months of 2024. It has surpassed Nestle to become the UK's second largest manufacturer of infant formula (in 2023) and follow-on formula (in 2024). Since the size of the addressable market (ie number of potential customers for infant formula) has not increased, and appears to have decreased, over this period,<sup>204</sup> Kendamil's growth has been at the expense of existing brands.
- 7.9 While Kendal is a prominent example of successful entry, we consider that its success is unlikely to be replicated by other potential entrants. The distinctive features of Kendal's case, and the challenges it has faced as an entrant, are

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<sup>202</sup> Note that this category includes all food and drink products aimed specifically at babies & toddlers and therefore is broader than formula milks.

<sup>203</sup> Since Lidl entered in August 2024, it is not included in our shares of supply analysis or pricing analysis, which cover the period to July 2024.

<sup>204</sup> Based on CMA analysis of total volumes sold by manufacturers of (i) 800g powder (infant formula and follow-on formula) and (ii) 200ml ready-to-feed (infant formula and follow-on formula) – note this does not encompass the entire market, but provides a good guide to overall trends. One manufacturer submitted that the number of births has been falling, stating that in 2022 there were 17% fewer births than there were in 2012, and that 'potential market for infant formula has therefore been reducing over time'. Likewise, an internal document from one retailer setting out 'market context' noted that birth rates are declining.



discussed further later in this sub-section. Our view that Kendal's success is unlikely to be replicated is consistent with the lack of credible actual or potential entry at meaningful scale by any other firms that we have observed in the market and with our discussions with potential entrants.

- 7.10 Aldi entered with its own-label brand Mamia in 2016, initially with one infant formula product (900g powder) and one follow-on formula product (900g powder), both manufactured by a contract manufacturer, [REDACTED]. However, Aldi discontinued the follow-on formula product in 2022, due [REDACTED]. Until August 2024, Aldi's Mamia infant formula was the only own-label formula product available in the UK.<sup>205</sup> It has persistently had a very low share of supply: [0-5%] in the first seven months of 2024, down slightly from [0-5%] in 2019.
- 7.11 Sainsbury's launched an infant formula product (900g powder) and a follow-on formula product (900g powder), both under its own-label 'Little Ones' brand, which was produced by [REDACTED] as a contract manufacturer. Both products were delisted in 2020.<sup>206</sup> Sainsbury's told us that it decided to discontinue these products because:
- (a) [REDACTED].<sup>207</sup>
  - (b) [REDACTED].
  - (c) [REDACTED].
- 7.12 In August 2024, Lidl introduced an infant formula product and follow-on formula product under its own-label 'Lupilu' range (both 800g powder, produced by a contract manufacturer, [REDACTED]). Lidl told us that these are currently available in [REDACTED] of its [REDACTED] UK stores. [REDACTED]. Lidl said that the rationale for its plan to enter is its wider strategic investment in the Lupilu brand in an effort to attract more families into Lidl.
- 7.13 Based on information gathered from other UK retailers we understand that no others are planning to enter the supply of formula milks in the UK.
- 7.14 Lidl's entry provides an additional more affordable option for consumers able to shop at Lidl. While it is too early to judge its impact on competition in the wider market, we consider that the best indication can be gleaned from the example of Aldi, since both are similar discount retailers offering an own-label 800g powder product, produced by contract manufacturers. Since Aldi has had a minimal impact on the market over the past eight years, as demonstrated by its very small share of supply and its decision to discontinue its follow-on formula product, our view is

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<sup>205</sup> These products are available only from Aldi stores in England, Scotland and Wales; there are no Aldi stores in Northern Ireland.

<sup>206</sup> With some residual stock sold until early 2021.

<sup>207</sup> [REDACTED].

that Lidl is likely to face significant barriers to becoming a sizeable player in the market, absent any significant changes to consumer preferences and behaviour.

- 7.15 In addition to retailers, the CMA spoke to four firms that are not currently active in formula milks in the UK, but are active in formula milks in other countries and/or in other baby and toddler feeding products in the UK, in order to understand whether and why (or why not) they would (or would not) consider entering the supply of formula milks in the UK. None of the firms we spoke to is currently considering entry; we discuss the reasons why not later in this sub-section.
- 7.16 Finally, we understand that a number of brands with a previously small presence in the UK have exited the market, including Piccolo in 2022,<sup>208</sup> and Boots in 2001.<sup>209</sup>

### **Key barriers**

- 7.17 Here we discuss the following key barriers to entry and expansion we have identified:
- (a) Limited suitable manufacturing capacity
  - (b) Investments in product safety and quality
  - (c) Developing a sufficiently differentiated offering
  - (d) Weak demand for own-label products
  - (e) Securing widespread distribution through major retailers
  - (f) High marketing costs<sup>210</sup>
  - (g) Restrictions on advertising and promoting infant formula to consumers
  - (h) Restrictions on interacting with healthcare professionals to discuss formula
- 7.18 As discussed in Section 5 Consumer behaviour: Brand loyalty and switching, consumers in this market rarely switch brands unless they experience feeding difficulties, and the large majority remain loyal to their brand of first choice. In many markets, low propensity to switch brands would present a significant barrier to new firms attempting to enter or expand. However, in this market, there is a high rate of churn, since consumers typically exit the market after a year or less (with

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<sup>208</sup> Based on product ranges and sales data submitted to the CMA by retailers. Piccolo's website does not currently list any formula products under its baby range: [Piccolo Organic Baby Food: Growing Generation Goodness \(mylittlepiccolo.com\)](https://mylittlepiccolo.com), accessed 17/10/24.

<sup>209</sup> Given the time elapsed, Boots was unable to provide its reasons for exiting the market in 2001.

<sup>210</sup> While regulations restrict the marketing of infant formula, the marketing of follow-on formula, growing-up milks, and other baby/toddler feeding products (which may benefit sales of infant formula by promoting overall brand awareness) is permitted.

new consumers entering to replace them). Danone submitted that ‘approximately 10% of the consumer base for infant formula needs to be recruited afresh each month’.<sup>211</sup> (Some portion of ‘new’ consumers will, however, have previously used formula with their older children.) This implies that incumbent manufacturers need to continually attract new customers, just as new entrants do.<sup>212</sup>

### *Limited suitable manufacturing capacity*

- 7.19 For potential entrants seeking their own facility, we understand that there are few suitable pre-existing production facilities currently available. Kendal, the only new entrant at significant scale in at least the past decade, and the only manufacturer that currently produces most of its formula products within the UK,<sup>213</sup> acquired its factory in Cumbria in 2015.<sup>214</sup> Kendal told us that a key factor in its success has been the workforce it ‘inherited’ with the factory, several of whom had 40+ years of experience in producing formula milks.<sup>215</sup> The alternative of building a formula milks factory and assembling a workforce from scratch is likely to be highly costly.<sup>216</sup>
- 7.20 For potential entrants wishing to contract out all or most of their production, we understand from several stakeholders with knowledge of the supply of infant formula that there is limited suitable manufacturing capacity in the UK and the rest of Europe.<sup>217</sup> As noted above, Aldi contracts out production of its Mamia infant formula. Lidl is also using a contract manufacturer for its own-label products, [✂].

### *Investments in product safety and quality*

- 7.21 Several market participants emphasised the importance of product safety and the investment required to establish and maintain rigorous production processes capable of meeting stringent quality and safety standards. One US-based formula milk manufacturer characterised formula as ‘harder to make than pharmaceutical drugs’ in the sense that it has over 150 inputs that must be blended in precise amounts, with hygiene and safety protocols which require sterile conditions (for ready-to-feed products) and near-sterile conditions (for powder products). One manufacturer pointed to the significant resources it must devote to stringent production processes and staff training (to prevent contamination and other hazards), in-house testing of products before they leave the factory, and safety

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<sup>211</sup> Danone’s response to the CMA’s invitation to comment, paragraph 12.

<sup>212</sup> Though we do not consider low switching rates to present a barrier to entry, this is not to say that incumbents enjoy no other advantages – see following discussion.

<sup>213</sup> [✂].

<sup>214</sup> Kendal Nutricare, About, [About | Kendal Nutricare](#), accessed 25/03/2024.

<sup>215</sup> The factory was already established as a formula milk plant dating back to the 1960s, having been previously operated by Heinz (and before that, Boots, and Glaxo). Kendal Nutricare, About, [About | Kendal Nutricare](#), accessed 25/03/2024.

<sup>216</sup> Kendal pointed to one example in the Americas which it understood to have cost over \$150 million.

<sup>217</sup> One manufacturer estimated that there were around 100 manufacturers in Western Europe capable of making a baby-grade oat bar, whereas the number capable of making infant formula was in the single digits.

controls and audits throughout the supply chain (eg for ingredients, packaging, and transportation). Another manufacturer submitted that its main priority is product safety, and any incident or quality control issue would likely do irreparable damage to its brand and business – managing these risks is reflected in the significant amount of investment it has had to make in its factory, [X], and upkeep of the business. Several retailers told us that one reason they are not active in own-label products is the high costs of production and technical expertise required to comply with regulations.

### *Developing a sufficiently differentiated offering*

- 7.22 Given the current importance of brand awareness and reputation, one way that entering manufacturers, or those seeking to expand, could try to win customers is to develop a differentiated offering – this could be based on genuine differences or perceived differences, or a combination of the two. Two manufacturers emphasised the importance of new entrants providing a sufficiently differentiated offering in order to compete effectively against established brands. As discussed earlier in Section 4 Market Outcomes: Product differentiation, there are a range of ways in which formula products potentially could be differentiated in terms of nutrition and health claims, taste and/or tolerability with babies, environmental sustainability, or convenience and ease of use. Some of these may be objective and verifiable; others may be more subjective or harder for parents to verify or understand, but nevertheless resonate strongly with some parents.
- 7.23 The most prominent example of an entrant, Kendal, told us that it sees its recipe – especially its use of whole milk fats (which it cites on the front of its packaging, along with several other attributes) – as a key reason for its popularity with parents.<sup>218</sup> Based on internal documents and our discussions with Kendal, we consider that Kendal has differentiated its products in several ways that have seemingly resonated with certain parents and thus helped it to win market share. In addition to the point about whole milk fats, Kendamil’s website and packaging highlight a range of attributes – some of which are unique in the UK market and some of which are shared by other brands but nevertheless feature strongly in Kendamil’s branding – including: British, family business, vegetarian (no fish oil); no palm oil, no corn syrup, non-GMO, grass-fed cows, and award-winning.<sup>219</sup> It is possible that any one of these factors in isolation may not have been enough to win a critical mass, but in combination they appealed to a sufficiently large number of parents. Consistent with this, one internal document setting out the findings of consumer research commissioned by Kendal in 2019 suggests that Kendamil’s unique selling point (USP) was that it was the only brand to offer multiple different

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<sup>218</sup> Specifically, Kendal told us that it regards its use of whole milk fats in its recipe leads to a better-tasting and higher-quality product with benefits that have been reported by parents.

<sup>219</sup> Kendamil, [Best Organic Baby Milk | Vegetarian Baby Formula Milk | Kendamil](#), accessed 03/2024.

USPs (including made in Britain, with full cream milk, vegetarian, no palm oil, etc) simultaneously.<sup>220</sup>

- 7.24 The challenge for any further new entrants is the inherent difficulty in sufficiently differentiating their products from those of the existing brands, given the constraints on product composition that exist due to stringent regulations (which effectively lead to a certain level of nutritional similarity between products). For example, one manufacturer of baby and toddler feeding products that had previously considered entering into the supply of formula milks told us that ‘trying to come with true differentiation for ... a consumer is really difficult.’

#### *Weak demand for own-label products*

- 7.25 Our consumer research found that own-label formula held little appeal for most consumers due to their perception that the quality of branded products was superior.<sup>221</sup> In line with this, retailers told us that one key reason for their lack of appetite to launch own-label formula products was the expectation of limited demand due to consumers’ preference for branded products. Relatedly, we have found that consumers tend to be strongly price insensitive, rendering less relevant the main reason that consumers typically opt for own-label products (their lower price point). In addition, consumers place high value on a product being widely available across different retailers, such that they are not obliged to switch products if, for example, visiting or moving to a different area where their preferred retailer may not be easily accessible;<sup>222</sup> however, an own-label product is available only at the retailer which supplies the product. We have also heard that low margins are a concern with respect to supplying own-label products. As noted above, the only established own-label product – Aldi’s Mamia infant formula – has persistently had a very low share of supply, and other own-label products (such as those by Sainsbury’s) exited the market due to [redacted].

#### *Securing widespread distribution through major retailers*

- 7.26 According to the CMA’s analysis of sales data submitted by manufacturers and retailers, the five largest retailers of formula milks (Asda, Boots, Morrisons, Sainsbury’s, and Tesco) together accounted for [60-70%] of total infant formula and [60-70%] of total follow-on formula sales (by revenue) in 2023. Consistent with this, manufacturers’ submissions and internal documents indicate that

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<sup>220</sup> The USPs presented in the research were: Kendamil is the only brand to be produced in Britain, made using raw British ingredients, that uses full cream milk, does not contain palm oil, is vegetarian, [redacted], is certified by the Soil Association, and is ethically sourced with traceable/sustainable ingredients.

<sup>221</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp40-41.

<sup>222</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p33.

supermarkets are the most important distribution channel.<sup>223</sup> One manufacturer submitted that in the retail channel, the majority of its sales (and those of other manufacturers of formula milks) are made through major supermarket groups, and that these retailers can ‘play a key role in actively supporting entry and expansion’ (it cited as an example Tesco’s support to Kendamil through its Incubator Programme). Another manufacturer of formula milks in other countries told us that it would require a significant amount of effort to get listed and drive sales in supermarkets. Another manufacturer said that it would be very challenging to convince a major retailer that it had a differentiated product, but that these retailers were central to achieving scale (due to their mass distribution), and scale was important to bring costs down.

7.27 Likewise, while direct-to-consumer sales of Kendamil have increased year on year, Kendal submitted that the key driver of its rapid growth in recent years has been increasing its presence in retailers, especially major supermarkets ([redacted]), through the listing of products and the securing of additional stocking points and space/facings within stores.<sup>224</sup> [redacted]. Nevertheless, it took Kendal several years to break into the major supermarkets at significant scale.<sup>225</sup> In a 2017 media article, Ross McMahon, a founder of Kendal, was quoted as saying ‘we literally cannot get a meeting’ (in the ‘UK multiples’, ie major retailers).<sup>226</sup>

7.28 [redacted] told us that the first six months of sales within a given retailer are crucial and, if a retailer does not feel a company is selling sufficient quantities, it may decide not to continue to stock that company’s product.

### *High marketing costs*

7.29 According to the CMA’s analysis of data submitted by manufacturers for the period 2021-2023, the magnitude of annual promotional and marketing spending related to follow-on formula and growing-up milks<sup>227</sup> by Danone and Nestle was substantial. In 2023, Danone UK spent [redacted] (equivalent to [20-30%] of its total follow-on formula and growing-up milks revenues) in the UK; whilst Nestle spent [redacted] (equating to [10-20%]).<sup>228</sup> Kendal and HiPP spent significantly lower amounts in both absolute and proportional terms; Kendal: [redacted] ([10-20%] of revenues) and HiPP: [redacted] ([5-10%] of revenues). One manufacturer of formula milks in other

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<sup>223</sup> For example, [redacted] stated that ‘Supermarkets is the MOST COMMON channel for... formula’, used most often by 58% of consumers, with the next most commonly used channels being online (10%), discount supermarket (9%), and convenience stores (9%).

<sup>224</sup> Kendal was selected to join Tesco’s ‘Incubator Programme’ in April 2022. Kendal told us that, in contrast to some other retailers, Tesco ‘leaned in’ to their partnership, ensuring it stocked a large range of Kendamil products, carried proper facings on shelves, and kept products in stock.

<sup>225</sup> Kendamil was launched in 2016 but did not enter most of the top-five major retailers of infant formula until 2021 and 2022 (for its Organic range) and 2023 (for its Classic range).

<sup>226</sup> Food Manufacture, Infant formula boss plans for growth, [Infant formula boss plans for growth \(foodmanufacture.co.uk\)](https://www.foodmanufacture.co.uk), accessed 03/2024.

<sup>227</sup> Regulations prohibit the marketing of infant formula; all manufacturers from which we requested this data submitted that they had spent nothing on promotional & marketing activity for infant formula.

<sup>228</sup> Nestle noted that the marketing spend here includes [redacted] which also covers [redacted].

countries noted that it would be important for an entrant to ‘invest quite heavily in gaining trust from consumers’, which would ‘require a reasonable amount of marketing spend’. Based on this, as well as the evidence discussed in Section 5 Consumer behaviour concerning the importance of brand awareness and reputation, we consider that effective marketing is likely to be an important feature of successful entry.

- 7.30 However, we note that Kendal has managed to develop the Kendamil brand and win substantial market share without spending significant sums on marketing. Kendal told us that its social media presence has mainly been generated organically (ie by parents posting content and reviews themselves, without official involvement of the firm) and that, at least until 2021/22, Kendal had ‘spent hardly anything’ on marketing.<sup>229</sup> Similarly, HiPP has apparently been able to maintain a relatively steady (though slightly declining) market share despite a relatively low marketing spend. We therefore consider the cost of marketing and brand-building to be a challenge, but not necessarily an insurmountable barrier to entry or expansion, particularly if the entrant already had a well-established and trusted brand supplying other baby or nutrition products.

#### *Restrictions on advertising and promoting infant formula to consumers*

- 7.31 As discussed in Section 6 Impact of the regulatory framework and regime, UK regulations restrict the advertising or promotion of infant formula (though not follow-on formula or growing-up milk) for reasons of public health policy.<sup>230</sup> One retailer told us that one reason it is not considering launching an own-label product is the marketing restrictions on infant formula, which ‘hamper [its] ability to build awareness of the product and undermines [its] commercial incentive’, particularly in an environment where there is already a ‘good range of options’ comprising ‘well-known, trusted brands’. Similarly, one manufacturer that supplies formula milks in other countries told us that the UK is a ‘restrictive market for [manufacturers being able to provide] information to consumers’, making it difficult for a new brand if it cannot communicate to parents, other than ‘putting a can on a shelf’.
- 7.32 While an entrant would, under the regulations, be permitted to advertise follow-on formula and growing-up milk, which may lead to a ‘halo’ effect on awareness and sales of its infant formula,<sup>231</sup> it would not be permitted to directly advertise or

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<sup>229</sup> The online marketing of Kendamil appears to have been perceived as successful, including by others in the industry. For example, one manufacturer’s internal document from October 2021 cites analysis by a third-party media agency, which found that Kendamil’s social media strategy drives more engagement post-purchase and stronger momentum through the ‘customer journey’ (especially strong ‘conversion’) compared to the average formula brand.

<sup>230</sup> A similar restriction on advertising and promoting infant formula exists in the CAP Code and BCAP Code. We note that on a number of occasions over recent years, the ASA has ruled that manufacturers have been in breach of this restriction – please see Appendix A Regulatory and policy framework for further detail on these rulings and the role of the ASA more generally in relation to regulating the advertising of infant formula products.

<sup>231</sup> See further discussion of this issue in Section 6 Impact of the regulatory framework and regime.

promote<sup>232</sup> its infant formula. This would most likely hinder its ability to compete with the incumbent brands that already enjoy high levels of brand awareness. However, we note that Kendal has managed to win substantial market share despite these restrictions.

#### *Restrictions on interacting with healthcare professionals to discuss formula*

- 7.33 As noted in Section 5 Consumer behaviour, healthcare professionals are often an important source of information and influence on parents' baby-feeding choices, including formula brand. However, manufacturers are restricted in their ability to engage with healthcare professionals in discussions of formula milks, primarily due to the widespread adoption in UK health services of the 'Baby Friendly Initiative' over the past two decades.<sup>233</sup> We spoke to representatives of the Royal College of Midwives (RCM) who told us that, years ago, formula milk companies would frequently 'target' outreach to midwives, inviting them to breakfast meetings and providing merchandise and free products, but that such practices no longer happen. The RCM told us that, nowadays, midwives are very keen to comply with the Baby Friendly Initiative and do not give out to patients information provided by the manufacturers.
- 7.34 Kendal indicated that the Baby Friendly Initiative has served to solidify the dominance of incumbent brands, since they had already built brand awareness and relationships with healthcare professionals prior to the implementation of the Baby Friendly Initiative. Kendal said that this made it very difficult for it to enter the NHS supply channel. We discuss further the issue of supply into the NHS channel later in this sub-section.
- 7.35 We consider that restrictions on manufacturers engaging healthcare professionals about their formula products may to some extent hinder new entrants' ability to build brand awareness and trust among parents; however, as above, we note that Kendal has managed to win substantial share in the retail market even in these circumstances. Furthermore, this barrier may naturally reduce over time in the sense that if a brand does become successful in the wider market, it is presumably only a matter of time before a large number of healthcare professionals gain awareness of it from their patients and own personal experiences and networks.

#### **Supply to the NHS**

- 7.36 Although the total value of sales through the NHS is small, supply to the NHS is important because receiving a particular brand of formula in a healthcare setting is a significant driver of decision-making for some parents (see Section 5 Consumer behaviour: Drivers of brand choice). In financial year 2022-23, NHS Trusts in

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<sup>232</sup> Other than through a baby care or scientific publication.

<sup>233</sup> UNICEF, [Learn more about the UNICEF UK Baby Friendly Initiative](#), accessed 17/10/24.



England and Wales spent just over £1.3 million on infant formula (around half of this was for milks given under medical supervision).<sup>234</sup> Comparatively, manufacturers' total infant formula revenue in the UK was well over £100 million in each of 2022 and 2023.<sup>235</sup> However, supplying the NHS is a key route to consumer exposure to infant formula, especially for those parents who need to begin formula use in hospital because of unexpected difficulties with breastfeeding. Parents rarely switch brand after leaving hospital because they trust what they have been given by healthcare professionals.<sup>236</sup>

- 7.37 The Royal College of Midwives told us that the availability of brands on wards may confer some sense of recommendation that these are superior milks, which parents would typically want to continue with.
- 7.38 To drive brand visibility in hospitals, in at least the period January 2019 to December 2023, manufacturers have consistently sold below cost to the NHS. The fact that manufacturers make a loss on their sales to the NHS shows that they consider this to be an important customer acquisition channel. Indeed, manufacturers have told us that this is part of a deliberate consumer acquisition strategy to get parents started on their brand because they know that these parents will most likely continue with it throughout their baby's first year:
- (a) A manufacturer submitted that all of its formula product categories supplied to the NHS in England between January 2019 and December 2023 were priced below the cost of production in order to comply with the NHS Supply Chain's threshold price, as indicated in the 2019 Instructions to Tender. Further, this manufacturer noted that there are 'a significant proportion of parents (19%) whose choice of IF is shaped in hospital'. Given that parents tend not to switch brand if their initial choice of infant formula is working well for their baby's health, this manufacturer told us it believes that it is important to ensure that its products are available in hospitals.
  - (b) Another manufacturer submitted that it is well known among industry participants that suppliers of ready-to-feed infant formula are operating a loss leader model, whereby they supply NHS Trusts at a loss on ready-to-feed. This manufacturer also said that it supplies NHS Trusts below cost because this corresponds with greater uptake in the community.

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<sup>234</sup> Note that financial year 2022-23 is the most recent full year of data. Further, products included have only been purchased under the Infant Feeding and Associated Accessories (IFAA) framework and only by NHS Trusts in England and Wales. These products are sold at below cost and so have a lower value, which may underweight the size of this revenue spend compared to manufacturer revenues. Milks given under medical supervision accounted for £651,000 and other milks accounted for £666,000 in financial year 2022-23.

<sup>235</sup> CMA's calculations based on manufacturers' sales revenue data.

<sup>236</sup> Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, pp9, 49-50.

(c) Further, another manufacturer submitted that it supplies its liquid infant formula to NHS Trusts at a price which is below the cost of goods. [REDACTED].

- 7.39 All the major UK manufacturers are approved to supply NHS Trusts; that is, they are all listed on the NHS Supply Chain framework.<sup>237</sup> We understand that places on the framework are awarded via NHS Supply Chain's tender process which is open to any and all suppliers that meet the criteria.<sup>238</sup> The framework acts as a 'catalogue' of options from which NHS Trusts can then select the products they want to buy. NHS Supply Chain has no influence over individual NHS Trusts' purchasing decisions and does not allocate products.
- 7.40 Regarding prices, NHS Supply Chain told us it does not currently set a ceiling price and that the price tendered by the supplier is the price the NHS Trust eventually pays. However, in 2019, NHS Supply Chain did set a ceiling price of 20p (excluding VAT) for 70ml-90ml liquid infant formula and bids above this were rejected. In 2023, the most recent tender, a manufacturer stated that NHS Supply Chain indicated to all manufacturers that prices should be kept low. Ultimately, all offers by the suppliers that were chosen to be on the framework were below the previous 20p ceiling price.
- 7.41 We have estimated shares of supply based on revenue data requested from NHS Supply Chain for the period April 2020 through to March 2024.<sup>239</sup>
- 7.42 Infant formula supply via the NHS Supply Chain framework is highly concentrated, with Danone and Nestle jointly accounting for [90-100%] share of infant formula in FY2023-24 (in England & Wales).<sup>240</sup> At brand level, in order of size, Cow & Gate ([REDACTED]%), SMA ([REDACTED]%) and Aptamil ([REDACTED]%) were the most purchased brands by NHS Trusts in FY2023-24. Consistent with this, the Royal College of Midwives told us that the brands available on wards are generally one or two of Aptamil, SMA and Cow & Gate.
- 7.43 Kendal had a very small ([REDACTED]%) share of supply to NHS Trusts, which differs materially from its position in the wider retail market. However, Kendamil sales to NHS Trusts have grown slightly between FY2020-21 and FY2023-24. Kendal told us that, as discussed earlier in this sub-section, there are restrictions on formula manufacturers speaking with healthcare professionals and this results in the status quo being perpetuated. Kendal submitted that this means Kendamil products are not widely stocked in NHS Trusts, despite its growing presence in the wider

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<sup>237</sup> The following manufacturers and their brands were purchased by NHS Trusts between 2020-21 to 2023-24. Danone with Aptamil and Cow & Gate; Nestle with SMA; Kendal Nutricare with Kendamil; and HiPP with HiPP Organic.

<sup>238</sup> The evaluation criteria are weighted based on quality (which accounts for 60% of the total weighting) and pricing (which accounts for 40%) when deciding which products should be accepted onto the framework.

<sup>239</sup> This analysis focuses on infant formula (ready-to-feed and powder), excluding food for special medical purposes, purchased via NHS Supply Chain by individual NHS Trusts. Note that we have included only products purchased under the IFAA framework and only by NHS Trusts in England and Wales. Procurement of formula for NHS Trusts in Scotland and Northern Ireland takes place under different arrangements.

<sup>240</sup> Excludes food for special medical purposes.

market. However, it is possible that Kendal's sales via the NHS will grow in future, given its substantial wider market growth.

- 7.44 HiPP's sales to NHS Trusts have been very low in the last four years and HiPP told us that the NHS has not ordered HiPP products since October 2023. HiPP also submitted that NHS supply is a very small proportion of its business [redacted], since the [redacted] and inability to provide healthcare professionals with full education and information have become untenable for a company of HiPP's size.
- 7.45 The experiences of Kendal and HiPP show that, although manufacturers can get onto the framework relatively easily, in practice this does not guarantee uptake from NHS Trusts, in part due to restrictions on interacting with healthcare professionals.

### **Provisional conclusions on barriers to entry and expansion**

- 7.46 Our assessment has taken into consideration entry and exit over the past decade, the existence and potential impact (or lack thereof) of any entry plans by retailers and manufacturers, and views from retailers and manufacturers – including some that do supply other countries (or other products in the UK) but are not currently supplying formula milks in the UK – as to the key barriers to entry in this market. Based on this evidence, and absent other significant changes to the market, our provisional conclusions are that:
- (a) There are several significant barriers to entering this market, which taken together significantly reduce the possibility of disruption to incumbents.
  - (b) While Kendamil provides a notable example of entry at scale, we consider that its success would be hard to replicate.
  - (c) Prospects for future entry are limited and unlikely to have a material impact on price competition.<sup>241</sup>

### **Competition between manufacturers**

- 7.47 In this sub-section, we discuss the extent and nature of competition between manufacturers of infant formula and follow-on formula. We have assessed evidence from manufacturers' and retailers' submissions, internal documents, and data on prices, revenues and costs. The sub-section is structured as follows:
- (a) Manufacturers' pricing strategies (in the period 2021 to 2024)

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<sup>241</sup> As noted in Section 4 Market Outcomes and discussed further in the sub-section 'Competition between manufacturers' later in this section, the entry and substantial growth in market share of Kendamil does not appear to have had a widespread impact on prices to date.

- (b) The role of price promotions in upstream competition
- (c) Non-price competition: product differentiation and innovation
- (d) Relationships between manufacturers and retailers
- (e) Provisional conclusions

## Findings

### Manufacturers' pricing strategies

- 7.48 Manufacturers' pricing decisions are likely to be informed by both the low levels of switching and high levels of churn in the market (that is, in any given month, many parents cease requiring infant formula and other parents start requiring it). These two market features have effects in opposite directions. Low levels of switching, combined with the essential nature of the product, give manufacturers strong incentives to raise prices well above the competitive level. However, the presence of high churn and limitations in manufacturers' ability to price discriminate between new and existing customers<sup>242</sup> mean that they also need to consider to some extent their ability to attract new parents when setting their recommended retail prices (RRPs) relative to those of their competitors.
- 7.49 To better understand the price trends described in Section 4 Market outcomes, we have used internal documents from 2021 to early 2024 to identify manufacturers' pricing strategies over time. In particular, we sought to understand the competitive constraint manufacturers imposed on each other's prices and their views on the importance of price competition for selling formula products.
- 7.50 Manufacturers can influence the final retail price in two ways – through the cost price they charge individual retailers and through setting RRP. According to the internal documents we have seen, when a manufacturer changes one of these, it typically (but not always) also changes the other by the same or a similar percentage.
- 7.51 Some of the manufacturers' internal documents refer to their estimates of price elasticities for various formula products. 'Price elasticity' measures how the quantity demanded of a product changes in response to changes in price. The greater a product's price elasticity, the more responsive consumers are to its price. If a product is 'price inelastic', it would be profitable to increase its price as the expected decrease in revenues resulting from the decrease in volumes sold (due to the higher price) would be (more than) offset by the additional revenue earned from the higher price on the remaining volumes. If a product is 'price elastic',

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<sup>242</sup> We note that 'starter packs', which include smaller sized ready-to-feed bottles with teats, are particularly targeted at parents of newborn babies. However, most other products would be used by both new and existing customers.

decreasing prices would be expected to lead to higher sales (and potentially higher profits, depending on the costs of the firm). If consumers in a market are relatively unresponsive to price movements (ie they have low price elasticity of demand), price competition between sellers in that market is more likely to be weak.

- 7.52 We note that it can be difficult to source the data needed to reliably estimate price elasticities, such as; data specific to the products for which price changes are proposed, or data which allows short-run effects to be distinguished from long-run effects of price changes. Therefore, as demonstrated below, manufacturers use these elasticity estimates alongside other factors, such as their assessment of competitive conditions, when setting prices. In this context we consider that price elasticity estimates are important because they are informative of manufacturers' views (in at least a qualitative sense) of how they believe consumer demand would likely respond to price changes (rather than a precise prediction of consumer behaviour).

#### *Danone*

- 7.53 Danone UK planned and implemented three rounds of RRP increases (referred to as cost price increases or 'CPIs') for most of its formula products: 'CPI1' in February 2022, 'CPI2' in September 2022 and 'CPI3' in March 2023. In these price increase rounds, where Danone UK considered multiple pricing scenarios, it implemented at least some of the highest price increases it considered. In the CMA's view, Danone UK gave limited consideration to its competitors' pricing when setting its prices, but it does seem to have considered them slightly more over time. These rounds of price increases were followed by a temporary price cut on certain Aptamil products for the period January to October 2024. Danone submitted that, overall in the period 2019 to 2023, it increased its prices by less than its costs increased. This is supported by our analysis of [REDACTED].<sup>243</sup>

- (a) For 'CPI1' in February 2022, Danone's price modelling considered three scenarios: [REDACTED].
- (b) [REDACTED]<sup>244</sup> [REDACTED].<sup>245</sup>[REDACTED].
- (c) The price increases for 'CPI2' in September 2022 were calculated[REDACTED]. The documents we have seen imply that [REDACTED].
- (d) 'CPI3' in March 2023 was also planned as a [REDACTED], with Danone considering [REDACTED] scenarios: [REDACTED].

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<sup>243</sup> [REDACTED].  
<sup>244</sup> [REDACTED].  
<sup>245</sup> [REDACTED].

- (e) Following 'CPI3' in March 2023, the internal documents we have seen indicate that [REDACTED].<sup>246</sup>[REDACTED]<sup>247</sup>[REDACTED].

### *Nestle*

- 7.54 Nestle increased the RRP's of SMA and Little Steps in the summer of 2021, in February 2022 (the same month as Danone's 'CPI1') and in February 2023 (a month prior to Danone's 'CPI3').
- (a) Nestle's internal price elasticity estimates were originally low but they were higher later in this period. [REDACTED].<sup>248</sup>[REDACTED].<sup>249</sup>
- (b) The internal documents we have seen suggest Nestle was strongly constrained by Danone's pricing and that Danone's price increases enabled Nestle to increase its prices to at least pass on its cost increases. Nestle's [REDACTED] for its [REDACTED], which occurred [REDACTED], suggests that it had aimed to absorb its cost increases but could no longer sustain that.<sup>250</sup> In comparison, [REDACTED].<sup>251</sup>[REDACTED]. In these documents, [REDACTED]. Nestle's [REDACTED] that its planned price increases for most of its products would not fully pass on its increased costs.<sup>252</sup> This suggests that because of [REDACTED] Nestle [REDACTED] was not able to increase its prices to match its expected cost increases.

### *HiPP*

- 7.55 From the data we have received from retailers, we have observed increases in retail prices for HiPP in early 2020, 2022, and 2023 (all in the period January to March depending on the retailer).<sup>253</sup>
- 7.56 Similarly to Nestle, the internal documents HiPP provided suggest that it benchmarked its prices and planned its price increases relative to Danone's pricing strategy for Aptamil. [REDACTED].

### *Kendal*

- 7.57 Kendal was able to provide only very limited documentary evidence as to its pricing strategy; therefore we have not been able to assess this in a similar way to Danone, Nestle, and HiPP. From the data we have received from retailers, we

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<sup>246</sup> [REDACTED] [REDACTED].

<sup>247</sup> [REDACTED].

<sup>248</sup> [REDACTED].

<sup>249</sup> [REDACTED]. [REDACTED]

<sup>250</sup> 'There have been significant input cost changes which we can no longer absorb.'

<sup>251</sup> [REDACTED]. [REDACTED].

<sup>252</sup> [REDACTED].

<sup>253</sup> CMA analysis based on retailers' monthly average selling prices.

have observed increases in Kendamil Organic's retail price in Autumn 2020 and for both Kendamil and Kendamil Organic in late 2022/early 2023.<sup>254</sup>

- 7.58 Kendal told us that the price of its best-selling product (ie the 'Classic' 900g/800g tub of infant formula powder) was deliberately positioned between those of [REDACTED] and [REDACTED], with the view that it is higher-quality [REDACTED]. Kendal also told us that it attempts to keep its prices as stable as possible for as long as possible, and that it employs an everyday low price strategy rather than price promotions (on follow-on formula and growing-up milk; promotions are not permitted on infant formula).<sup>255</sup>

### *Provisional conclusions*

- 7.59 We consider that Danone's internal documents indicate that it held significant pricing power from 2021 (the date of the earliest documents we have seen) through at least 2023, with Danone able to plan price increases with limited regard for competitors' pricing. According to their internal documents, Nestle and HiPP appear to have been constrained by Danone's pricing, especially its pricing of Aptamil, [REDACTED]. [REDACTED], while we do not have documentary evidence from Kendal, it submitted that the price of its standard infant formula was deliberately positioned between the prices of [REDACTED].
- 7.60 Taken together, the evidence from Danone's, Nestle's, and HiPP's internal documents suggest that the intensity of price competition between manufacturers has historically been low. This is evidenced by low price elasticity estimates from manufacturers for the majority of this period. This evidence of low price sensitivity is consistent with our consumer research findings (see Section 5 Consumer behaviour).
- 7.61 We noted above that manufacturers' pricing decisions are likely to be informed by both the low levels of switching and high levels of churn in the market and that these two features have effects in opposite directions. Based on the evidence above, we consider that it is the low levels of switching (driven by brand loyalty and price insensitivity) that would appear to have the stronger impact – in combination with the fact that brand reputation appears to persist (eg through recommendations by friends and family) and influence the brand choice of new customers.
- 7.62 The long-term impact of Kendamil's expansion on the intensity of price competition is uncertain. Following a period where Kendal grew substantially, Danone instigated price cuts on some Aptamil products from January 2024, although we note from Danone's internal documents that these price changes were temporary (and were planned after the CMA started to investigate the formula market and

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<sup>254</sup> CMA analysis based on retailers' monthly average selling price data.

<sup>255</sup> The lack of price promotions on Kendamil is borne out by the data we received from retailers – see later in this subsection.

during a period of increased press scrutiny, which may have influenced Danone's strategy). It is therefore possible that increased competition from Kendamil has triggered price cuts from Danone and potentially other brands, given we have observed that Danone's pricing constrains that of its competitors. (We note that Kendamil's own prices have not decreased so far in 2024, but have remained flat.) Nevertheless, if Danone were to reverse its price cuts, and Danone poses the main constraint on the rest of the market, it is likely that price cuts by other manufacturers would be reversed as well; therefore the prospects for more aggressive formula pricing – absent other significant market changes – are unclear.

### **The role of price promotions in upstream competition**

- 7.63 In formula milks, the role of price promotions is limited in two ways. First, price promotion is only permitted on follow-on formula and growing-up milk but is prohibited on any type of infant formula. Second, as discussed above in Section 5 Consumer behaviour, parents are highly brand-loyal and are unlikely to be induced by a price promotion to switch brand, even when moving from infant formula to follow-on formula.
- 7.64 From internal documents and price promotion data,<sup>256</sup> we found that manufacturers (rather than retailers) fund and design most price promotions. Given that parents do not switch brand in response to price differences, manufacturers primarily use price promotions to encourage existing customers to upgrade, eg from powders to liquids, or to progress through the stages, ie from infant formula to follow-on formula to growing-up milk.
- 7.65 Manufacturers' internal documents showed that they did not think price promotions were effective because parents are not very price sensitive. For example, a 2021 document from one manufacturer reassessing its promotions strategy concluded that promotions did not significantly contribute to its brands' performance. Another manufacturer's document from 2022 suggests that most of its formula products have 'very low' price sensitivity, and recommended that it should 'promote less (or less deeply)'.<sup>257</sup> In 2023, a manufacturer planned to switch to more frequent but less generous promotions, and prioritised funding base price cuts. We note that another manufacturer did not run price promotions; it submitted that its strategy was to focus on 'everyday low pricing'.
- 7.66 Due to parents' brand loyalty, price promotions do not substantially increase the total volumes purchased over time; rather, they mainly cause parents to stock up when and where their preferred product is cheaper. Such opportunities may be

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<sup>256</sup> This data was from the five biggest infant formula retailers (Asda, Boots, Morrisons, Sainsbury's, and Tesco).

<sup>257</sup> It did, however, say that 'for volume and profit' it should promote on 'elastic' products only.



beneficial to parents to some extent,<sup>258</sup> but they do not substantially increase manufacturers' total revenues and therefore manufacturers have somewhat limited incentives to run price promotions. As such, pricing promotions are not currently an important part of upstream competition, even where they are permitted.

### **Non-price competition between manufacturers: product differentiation and innovation**

- 7.67 In this sub-section, we examine the nature of competition between manufacturers on parameters other than price, namely product differentiation and innovation.
- 7.68 As discussed above in Section 5 Consumer behaviour, doing what is best for their baby is the overriding motivator for parents when choosing infant formula products, with brand reputation representing the key overarching factor influencing choice of brand. There is a close link between brand reputation, product differentiation, and innovation. A product can be differentiated in ways that enhance brand reputation (including through real and perceived quality attributes), while innovation can lead to new types of differentiation or to the creation of new products that are valued by consumers. In addition, the perception of 'innovativeness' (eg marketing a brand as 'backed by research' or 'science-led') can also in itself be influential.<sup>259</sup>
- 7.69 As noted in Section 4 Market Outcomes: Product differentiation, manufacturers have strong commercial incentives to attempt to differentiate and assert the merits of their products.
- 7.70 Manufacturers and respondents to our invitation to comment submitted that manufacturers compete strongly on quality and innovation.
- (a) Danone stated that non-price factors (ie quality and innovation) 'play a critical role in driving competition and raising consumer welfare in the infant formula market' and that competition 'is driving continuous product innovation, thereby enabling parents and caregivers to select from a wide choice of products with different features and price points'.<sup>260</sup> Danone also stated that, 'to meet the significant consumer demand for higher quality products that bring additional nutritional and health benefits, [it] has ... invested heavily in R&D to continuously improve its products ... including through improved product formulations and new product features', listing several examples of

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<sup>258</sup> Although we note that highly budget-constrained consumers may not be able to take much advantage of temporary price promotions if their budget does not allow them to buy multiple units within a short space of time.

<sup>259</sup> For example, *Thinks Insight and Strategy (2024)*, *Experiences using infant formula and follow-on formula: Qualitative research report*, pp32, 36.

<sup>260</sup> Danone's response to the CMA's invitation to comment, paragraph 7.

its innovations which were subsequently imitated by competitors and/or integrated into the minimum regulatory requirements.<sup>261</sup>

- (b) Nestle submitted that manufacturer-led innovation is very important to develop better infant formula products and that it is committed to investing in research and development to continually improve and innovate.<sup>262</sup> It said that ‘parents consider factors such as medical benefits, inclusion of unique ingredients, nutritional/ advanced benefits, pack format, availability, price positioning, and brand trust with regards to safety and quality’.<sup>263</sup>
- (c) A respondent to our invitation to comment submitted that it believes that the significant global R&D by academics and industry to better understand the composition of breast milk can ‘unlock positive outcomes’ for children.<sup>264</sup>

7.71 The biggest manufacturers also told us that they spend substantial sums on R&D related to formula milks.

- (a) In 2023, Danone UK spent a substantial sum globally on specialist nutrition R&D. Given infant formula products are a particularly R&D intensive product, Danone UK believes that a majority of this spend relates to activities relevant to infant formula.<sup>265</sup>
- (b) Nestle told us that it spent substantial sums on R&D related to formula milks.
- (c) In 2022, Kendal spent [below £5] million on research and development, which was equivalent to [5-10%] of the turnover to which the spend relates.

7.72 To the extent that there is genuine and meaningful quality differentiation between products, and parents can use clear, accurate and impartial information to understand and choose products based on how much (if at all) parents value such differences, this would represent healthy competition on quality. Likewise, to the

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<sup>261</sup> Danone’s response to CMA’s invitation to comment, p4, paragraph 19. It provided the following examples:

- Danone offered 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 infant formula containing prebiotics and pioneered prebiotic formulas based on its mixture of prebiotic GOS:FOS, in an evidence-based 9:1 ratio. It said that this innovation has since been followed by other competitors, although at lower levels.

<sup>262</sup> Nestle’s response to the CMA’s invitation to comment, question 20. By way of an example, Nestle submitted that its research into protein and amino acids has led to a ‘demineralization and fractionation process of sweet whey. This optimised protein (included in SMA Pro products) has been clinically shown to support age-appropriate growth, comparable to WHO standards’.

<sup>263</sup> Nestle’s response to the CMA’s invitation to comment, question 7.

<sup>264</sup> Anonymous response to the CMA’s invitation to comment, p4.

<sup>265</sup> Danone UK submitted that the UK market will be ‘disproportionately important’ to supporting these research and development activities. Danone UK’s specialist nutrition category includes non-infant formula products (such as baby foods, and adult medical nutrition), but Danone UK submitted that it believes that ‘a majority’ of this spend relates to activities relevant to infant formula.

extent that manufacturers vie to bring out important new innovations that are valuable to parents, this would represent healthy competition on innovation.

- 7.73 We consider that there are examples where manufacturers have sought to compete on product differentiation and innovation that have brought genuine benefits for parents and their babies. For instance, following Danone's addition of omega-3 docosahexaenoic acid (DHA) to its infant formula products since 1992, the European Commission's Delegated Regulation EU 2016/2017 (implemented in 2020) made this a mandatory ingredient for all infant formula.<sup>266</sup> The introduction of organic and vegetarian ranges offer genuine choice for parents who prefer such options for ethical or lifestyle reasons. The innovation of different formats of formula – ie ready-to-feed (liquid) and tabs – improves choice for parents who highly value convenience when preparing formula.
- 7.74 However, our concern is that it appears that manufacturers' efforts on quality and innovation are primarily oriented to signalling their trustworthiness and superiority via product packaging and broader marketing, with use of phrases such as 'inspired by research' or 'advanced' connoting intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products. They do so in a context in which most parents are likely to find it difficult to meaningfully assess information about product quality. For example, manufacturers tend to emphasise their R&D efforts when communicating with consumers (see examples above in Section 6 Impact of the regulatory framework and regime: On-pack messaging), and this is likely to be influential with respect to consumer decision-making, even though relatively few new developments have been assessed by the relevant independent expert body as beneficial to babies and mandated to be included in all infant formula (see Section 4 Market outcomes: Product differentiation). Such signalling can help manufacturers (i) to build their brand reputation in general; and (ii) to justify charging a premium on certain products/ranges.
- 7.75 One particular example of this is that each of the largest manufacturers offers a portfolio of different brands, with the market broadly structured across three tiers ('premium', 'standard', and 'value' or 'entry').
- (a) Danone produces (in descending price order) Aptamil Advanced, Aptamil, and Cow & Gate. Regarding Aptamil, Danone submitted that it invests 'heavily' in research and development to ensure that Aptamil is the 'closest alternative to breastmilk' on the market. Danone said that 'while Cow & Gate still exceeds minimum nutritional standards in several areas, Danone accepts that the formulation will be further behind the cutting-edge research

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<sup>266</sup> DHA is an omega-3 fatty acid, which is considered important for babies' brain and eye development.

embodied in Aptamil.’ Regarding Aptamil Advanced, Danone said that it includes additional ‘key’ nutrients.<sup>267</sup>

- (b) Nestle produces (in descending price order) SMA Advanced, SMA, and Little Steps. Nestle’s SMA website describes the SMA Advanced range as its ‘most advanced formulation yet’ which is ‘specially tailored for babies & toddlers with protein broken into smaller pieces.’<sup>268</sup> Meanwhile, its SMA range is described as ‘expertly developed with nature in mind to help support babies’ unique nutritional needs’ and Little Steps simply as ‘tailored for every stage of development’.<sup>269</sup> Nestle submitted that Little Steps provides ‘great value for money without compromising on nutrition or product quality’.<sup>270</sup>
- (c) Kendal produces a (higher priced) organic range and a (lower priced) non-organic or ‘classic’ range, between which the main difference is that the former uses organic milk.<sup>271</sup> Kendal has submitted that it ‘believes’ in product differentiation, but its messaging ‘primarily leans on more general values’ (which Kendal identified as its clean ingredients, organic recipe, and family business), which it considers to be concepts that any consumer ‘intuitively can relate to’ and not messages aimed at suggesting nutritional superiority.

7.76 It is worth noting that consumer uptake of some of the premium infant formula ranges is low – in the first seven months of 2024, Aptamil Advanced had a revenue share of [0-5%] and SMA Advanced had a share of [0-5%]. We consider it likely that some consumers assess the value-for-money of standard products by benchmarking against the equivalent premium products and that manufacturers recognise this (a practice known as ‘reference pricing’). In other words, part of manufacturers’ rationale for maintaining the premium ranges – despite relatively low sales and [§] than on standard ranges – is likely to be indirectly supporting sales and pricing of the standard ranges. This tiered pricing strategy also enables manufacturers to discriminate between more- and less-price-sensitive consumers.

7.77 We have examined the unit costs of production of different formula products, based on disaggregated cost data provided by manufacturers. This analysis indicates that the raw ingredients in ‘premium’ products do appear to cost more than those in ‘standard’ products; however, there is a much smaller difference in the cost of the raw ingredients between ‘standard’ and ‘value’ products.

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<sup>267</sup> Specifically human milk oligosaccharides 2’FL, which ‘research suggests [...] has a role in the development of babies’ immune systems’; phospholipids which ‘play an important role in cells’ structural integrity, infants’ inflammatory and immune responses and neural development’; and milk fat with SN-2 palmitate which leads to ‘improved fatty acid and calcium absorption, reduced calcium soaps in baby stools, reduced constipation and softer stools’.

<sup>268</sup> SMA, Nutrition baby milks, [Formula Milk](#), accessed 31/07/2024.

<sup>269</sup> SMA, Nutrition baby milks, [Formula Milk](#), accessed 31/07/2024.

<sup>270</sup> Nestle’s response to the CMA’s invitation to comment, p1.

<sup>271</sup> Kendal also produces a goat’s milk formula (which is priced higher than its organic cow’s milk range). Since this product is sold in very small volumes, we do not discuss it further here.

- (a) Over the period January 2019 to May 2024, the unit cost of raw materials<sup>272</sup> used for the production of Aptamil Advanced infant formula 800g powder was markedly higher than for Aptamil infant formula 800g powder,<sup>273</sup> implying there is a difference in the cost and/or quantities of one or more ingredients in Danone’s premium range compared to its standard range (although we note that the higher cost of the ingredients does not necessarily imply a proportionate, or indeed any additional, benefit to babies). This is consistent with Danone’s submission that it adds certain ‘key’ nutrients to Aptamil Advanced.
- (b) However, the unit cost of raw materials<sup>274</sup> used to produce Aptamil infant formula 800g powder has typically been very similar to that of Cow & Gate infant formula 800g powder, [REDACTED].<sup>275,276</sup> Yet, over this period, Danone has consistently set the RRP of Aptamil infant formula 800g powder [REDACTED] higher than Cow & Gate infant formula 800g powder.<sup>277</sup>
- (c) Over the period January 2019 to May 2024, the unit cost of raw materials used for the production of SMA Advanced infant formula 800g powder was markedly higher than for SMA infant formula 800g powder,<sup>278,279</sup> implying there is a difference in the cost of one or more ingredients in Nestle’s premium range compared to its standard range (although, as above, the higher cost of the ingredients does not necessarily imply a proportionate, or indeed any additional, benefit to babies).
- (d) However, there was a smaller difference in the respective unit cost of raw materials used for the production of SMA infant formula 800g powder and Little Steps infant formula 800g powder over this period.<sup>280</sup> The unit cost for Little Steps was lower for almost all of the period (but was similar or higher in some parts of the period, particularly between around September 2023 and January 2024).<sup>281</sup> Yet, since 2019, Nestle has consistently set the RRP of SMA [REDACTED] higher than Little Steps.<sup>282</sup>

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<sup>272</sup> ‘Raw materials’ here refers to the ingredients in the formula (and does not include [REDACTED]). Between 2020 and 2024, the single most costly ingredient in the composition of Aptamil Advanced infant formula 800g powder was [REDACTED], whereas for Aptamil in most of these years it was [REDACTED].

<sup>273</sup> Based on data submitted by Danone.

<sup>274</sup> The unit cost of raw materials reflects the cost of ingredients but excludes [REDACTED].

<sup>275</sup> Based on data submitted by Danone.

<sup>276</sup> Between 2020 and 2022, the single most costly ingredient in the composition of [REDACTED] was [REDACTED] – this accounted for [REDACTED] during this period. In 2023, [REDACTED] was the single most costly ingredient [REDACTED]. In 2024, [REDACTED] was the single most costly ingredient [REDACTED].

<sup>277</sup> Based on RRP data submitted by Danone.

<sup>278</sup> Based on data submitted by Nestle.

<sup>279</sup> Over the period 2019 to 2024, [REDACTED] made up a consistently higher percentage ([REDACTED] a consistently lower percentage) of the total raw material cost of SMA Advanced compared to SMA and Little Steps. Based on data submitted by Nestle.

<sup>280</sup> Based on data submitted by Nestle.

<sup>281</sup> [REDACTED].

<sup>282</sup> Based on RRP data submitted by Nestle.

- 7.78 In our view, the information asymmetry (ie between what manufacturers know about their products and what most parents could realistically be expected to understand) is important, because it creates the conditions for manufacturers to compete on quality *signalling* via intangible, non-verifiable benefits rather than specific and verifiable points of difference about particular products. Through product packaging and broader marketing efforts, manufacturers are highly influential in shaping the information environment in which parents make their purchasing decisions. At the same time, as noted above in Section 5 Consumer behaviour, there is often limited clear, accurate, and impartial information available to parents (eg from healthcare professionals) to verify or counter-balance such signalling and messaging by manufacturers.
- 7.79 While there have been examples of product differentiation and innovations that have brought valuable benefits to parents and babies, legislation ensures that all infant formulas provide all the nutrients a healthy baby needs for development and growth. Therefore, we consider that ultimately there is limited scope for manufacturers to compete by offering products that are materially differentiated on nutritional quality.<sup>283</sup> In the case of some brands within a given manufacturer's portfolio (including Danone's Aptamil vs Cow & Gate, and Nestle's SMA vs Little Steps), we have observed substantial RRP/retail price differences that do not appear to be close to proportionate to their respective raw material unit costs. We consider this evidence to support our concerns around quality signalling and reference pricing.

### **Relationships between manufacturers and retailers**

- 7.80 In this sub-section, we discuss the relationships between manufacturers and retailers to understand the extent to which retailers impose a constraint on manufacturers' behaviour. First, we describe the typical process by which manufacturers and retailers negotiate arrangements relating to the listing, distribution, presentation, and pricing of formula products. Second, we examine how manufacturers use RRP's. Third, we assess the relative bargaining strength of manufacturers and retailers, and the extent to which retailers are able to 'discipline' manufacturers.

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<sup>283</sup> Further evidence for this, as noted above in 'Barriers to entry and expansion', is from one manufacturer of baby and toddler feeding products that had considered entering the supply of formula milks, which told us that 'trying to come with true differentiation for ... a consumer is really difficult'.

### *How negotiations between manufacturers and retailers work*

- 7.81 While the precise process varies, broadly speaking, major retailers engage with manufacturers in:<sup>284</sup>
- (a) Annual planning discussions – typically (but not always) resulting in Joint Business Plans – to determine the list of products to be supplied and the commercial arrangements for these, including their cost price (ie the price paid by retailers to manufacturers), any rebates and other discounts (which may take a range of forms), product range (ie listings and de-listings) including new product development, distribution across and within stores (eg how many and which stores, and presentation within bays), and any incremental investments by the manufacturer (eg to support promotional activity and point-of-sales media).
  - (b) Periodic (eg biannual) range reviews, in which listings and distribution are revised. Typically, the retailer identifies and warns manufacturers of an at-risk ‘tail’ of poorly performing products, and invites their response. These negotiations may trigger amendments to elements of the previously agreed Joint Business Plan, such as additional investments by the manufacturer.
  - (c) Other more *ad hoc* negotiations, which may be triggered by, for example, CPIs, supply chain issues, or a change in commercial strategy.
- 7.82 These discussions are usually conducted at the baby category level. As such, the plan may cover broader items such as other baby/toddler feeding products, nappies, and toiletries; however, details of the investments and activities agreed in the plan will often refer to specific ranges or stock-keeping units (SKUs).
- 7.83 We reviewed dozens of annual Joint Business Plans and other similar agreements submitted by manufacturers and retailers. By way of illustration, the key investments and activities included in two recent examples (chosen at random) are summarised below:
- (a) [REDACTED]<sup>285</sup> [REDACTED]<sup>286</sup>; [REDACTED].
  - (b) [REDACTED].

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<sup>284</sup> This description characterises manufacturers’ engagement with the major retailers (ie Asda, Boots, Morrisons, Sainsbury’s, and Tesco), which are the most important supply channel for formula milks and tend to carry the widest range. [REDACTED].

<sup>285</sup> Refers to positioning formula products in order of ‘stage’ (ie the baby/toddler’s age).

<sup>286</sup> Refers to grouping together on the shelves all formula products that fall under a particular brand.

### *Recommended retail prices (RRPs)*

- 7.84 Consistent with the data submitted to us regarding RRP changes (2019-2024), most manufacturers told us that they provide RRPs to retailers<sup>287</sup> periodically (usually annually) and/or in certain scenarios, eg when cost prices change or new product lines are introduced. In their submissions, manufacturers emphasised that their RRPs are for guidance only and that retail pricing remains at the sole discretion of retailers. Manufacturers told us that they do not monitor adherence to RRPs, but do monitor in-store prices (of both their own and competitors' products) across retailers, variously using in-house tools or data collected by market research firms.
- 7.85 We have seen in some internal documents several examples of dialogue between manufacturers and retailers concerning RRPs, and retail prices across the board have tended to closely track RRPs (see further discussion of this in the sub-section 'Competition between retailers' later in this section). However, we have not seen evidence of resale price maintenance.<sup>288</sup>

### *Relative bargaining strength*

- 7.86 Next, we consider the relative bargaining strength of manufacturers vis-à-vis retailers. In theory, strong buyer power from retailers could offset (at least to some extent) weak price sensitivity among consumers and exert downward pressure on prices, *if combined* with robust competition at the retail level (retail-level competition is discussed further in the sub-section 'Competition between retailers' later in this section).<sup>289</sup>
- 7.87 Several factors contribute to retailers' buyer power in this market. First, retailers are large and commercially sophisticated entities that routinely deal with hundreds if not thousands of suppliers, including major global fast-moving consumer goods suppliers.<sup>290,291</sup>
- 7.88 Second, they are the single most important distribution channel for formula manufacturers in the UK. As noted in Section 3 Market overview: Market structure and market participants, retailers in total accounted for [80-90%] and the top five retailers of formula milks for [60-70%] of manufacturers' aggregate revenues on formula milks in 2023.<sup>292</sup> As such, internal documents indicate that manufacturers

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<sup>287</sup> These manufacturers confirmed that any given product's RRP was the same for all retailers.

<sup>288</sup> Resale price maintenance is an activity that breaches competition law. It occurs when a supplier requires, directly or indirectly, that a retailer not resell the supplier's products below a specified price. Resale price maintenance can occur indirectly if RRPs are combined with threats or incentives.

<sup>289</sup> However, in the absence of strong retail-level competition, retailers' buyer power would not necessarily translate into better outcomes for consumers.

<sup>290</sup> Danone submitted that its 'main sales channels for IF are controlled by large and expert purchasers [ie retailers and the NHS] with significant buyer power'. Danone's response to the CMA's invitation to comment, paragraph 9d.

<sup>291</sup> See also CMA (2023), [Price inflation and competition in food and grocery manufacturing and supply](#), paragraph 1.9.

<sup>292</sup> Includes revenues in infant formula, follow-on formula, growing-up milks, and special milks.



are very keen to see as many product listings as possible maintained or increased, particularly at major supermarket chains, and to avoid de-listings. In one example we have seen, months of dialogue followed the decision by one retailer to de-list a certain brand, resulting in the manufacturer orchestrating a digital public campaign to persuade the retailer against the de-listing. The retailer re-listed this brand two years later.

- 7.89 Third, retailers control the allocation of shelf space, and maintaining or securing more shelf space is an important factor that impacts a product's sales. Retailers told us that while manufacturers may seek to influence shelf space and positioning, retailers primarily determine these based on products' relative performance and broader merchandising principles, and reserve the right to make changes during the course of the year, subject to the applicable provisions of the Groceries Supply Code of Practice (GSCOP). Internal documents and retailers' submissions show that retailers tend to allocate the amount of shelf space to products or brands in proportion to their respective sales (which helps also to keep the most popular products in stock on busy days) – and are often able to push back on manufacturers' requests for greater space. One retailer submitted that suppliers do not typically offer financial incentives to reserve a share of shelf space (though it noted two recent counter-examples to this). However, internal documents from one retailer suggest that some retailers routinely agree dedicated investment by manufacturers within Joint Business Plans to maintain or grow their shelf space.
- 7.90 However, the effects of retailers' practices with respect to shelf space on competition between manufacturers (and any resulting benefits for consumers) are unclear. On one hand, policies to allocate shelf space in line with sales performance mitigate against manufacturers with the deepest pockets being able to dominate the aisle. In its submission, one retailer noted the example of new entrant Kendamil being granted shelf space previously allocated to other brands. On the other hand, given that physical on-shelf presence is an important way to build brand awareness and drive sales, such policies are likely also to reinforce the status quo (eg Danone's brands are often allocated at least 60-70% of shelf space, boosting its brand awareness and sales, which helps it maintain its shelf space, and so on). Furthermore, when retailers do receive payments to maintain/increase shelf space, these appear to be treated as a support to retailers' margins, rather than being passed onto consumers directly in the form of lower retail prices. In the internal documents we reviewed, we found only one instance, in September 2021, where a manufacturer offered (modest) cost price reductions, rather than incremental funding to the retailer, across a range of products in exchange for increased shelf space, facings, and distribution. It is not clear from the documents if this proposal was ever implemented; however, we do not see

clear evidence of a commensurate drop in the retailer's retail prices for these products at that time.<sup>293</sup>

7.91 Fourth, we have not seen evidence that manufacturers with wide product portfolios beyond formula milks (ie Danone and Nestle) are able to leverage these to strengthen their bargaining position in formula milks. As noted above, for most retailers, negotiations are generally carried out at baby category level. One retailer told us that for larger suppliers it has broader group-level agreements in place covering interactions with those suppliers across categories. However, projects within these agreements are designed and implemented at category level, and also do not include any details on pricing.

7.92 In line with industry practice, retailers will often try to validate or challenge CPIs presented by manufacturers, by comparing the cost of goods across manufacturers and retail prices across competitors, and by independently assessing inflation in key inputs such as dairy, vegetable oils, packaging, and energy.<sup>294,295</sup> We have seen in internal documents instances where retailers were able to apply pressure to some extent, including with respect to pricing:

- (a) In [REDACTED] 2021, one retailer responded to a round of CPIs by a particular manufacturer by: (i) refusing to accept them on five products that the retailer deemed to be performing poorly;<sup>296</sup> (ii) declining to list two additional products; and (iii) declining to accept any incremental investment by the manufacturer.
- (b) In [REDACTED] 2022, internal email exchanges between buyers at one retailer discussed the outcome of negotiations with a manufacturer concerning its proposed CPIs. In [REDACTED] 2022, the buying manager's email stated that 'there is strong validation [ie of the manufacturer's claimed input cost increases] from the relevant team across the factors that [the manufacturer] has shared which we are able to measure' and 'there is also strong validation across the industry in terms of competitor CPIs'. However, the buying manager noted that as a result of the CPI, they declined to support new listings that the manufacturer had requested. In addition, the retailer was able to secure increased trade investment for price promotions, gate fees, and marketing spend.
- (c) In [REDACTED] 2023, the same buying manager as in the above example noted in further internal email exchanges that 'It's been a torrid 12 months for [the

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<sup>293</sup> Based on retail price data submitted by [REDACTED].

<sup>294</sup> A retailer told us that it 'will challenge suppliers where it becomes apparent to us – from live/current pricing – that our competitors have been able to adopt a lower retail price point than us'. There are some examples of manufacturers presenting to retailers the justification for their CPIs, by breaking down the extent of inflation in key inputs such as milk powder, tinplate and aluminium (for packaging), plastic resins, and transportation.

<sup>295</sup> However, retailers are likely to have limited visibility into manufacturers' costs – see further discussion of this below.

<sup>296</sup> The documents do not show whether, as a result of the retailer's refusal, these products were de-listed or maintained at their previous cost price.

manufacturer] but... they are starting to listen'. They went on to explain that in response to the actions taken above, the manufacturer had paused further CPIs and were 'absorbing for longer some of the inflationary cost pressures within their business' – meaning that the price of some of its core products were now markedly cheaper than those of a close competitor.

- (d) In [redacted] 2023, a retailer told one manufacturer that they needed to develop 'inflation busting proposals together' because recent value growth from price rises was 'unsustainable in the long term', noting that its prices for formula milk were 'out on value' (ie too high). In the same month, the same retailer urged another manufacturer to make 'big investments in price where we know it matters', giving examples of cheaper pricing of certain products at two rival retailers.
- (e) In [redacted] 2024, a retailer warned one manufacturer that it was 'uncompetitive across key areas' including its infant formula 800g and its liquid products.

7.93 There is also evidence that, despite apparent lack of constraint on price increases, manufacturers were cognisant of the economic climate affecting household budgets over the past few years, and made attempts to work with retailers to extend access to their more affordable brands/ranges. From 2023 onwards, we have observed in the internal documents we reviewed an uptick in manufacturers' references in their communications with retailers to their 'affordable', 'accessible', and 'value' brands and products – including explicit statements concerning attracting shoppers in the cost-of-living crisis.

7.94 However, in our review of internal documents, we did not find many examples where retailers were able to strongly push back against manufacturers' demands or successfully constrain manufacturers in passing on their full cost increases (which is consistent with the data on manufacturers' gross margins remaining fairly stable, as discussed in Section 4 Market Outcomes: Margins). Indeed, it is evident from both internal documents and our analysis of manufacturers' and retailers' pricing data that retailers did accept multiple substantial CPIs throughout 2022 and 2023, prior to prices stabilising or decreasing in 2024. One retailer told us that, 'For infant formula specifically, we have not been able to refuse a cost price increase with any manufacturer in the past three years'. Another retailer told us that, while it strives to challenge manufacturers on pricing, '[it is] not always successful'. In a February 2022 internal email exchange at a retailer, the buying manager highlighted in relation to at least two manufacturers 'the frequency and depth of inflation being passed on wholesale across... the [formula] milk [portfolio]', stating that, 'There is night and day between the inflation [formula] milk suppliers are passing [on] and those in the food side of the [baby] category'.

7.95 This evidence, in combination with the level and relative stability of manufacturers' gross margins (in percentage terms) over this period, suggests that:

- (a) Manufacturers (on aggregate) do not appear to have increased their profit margins during the inflationary period;
- (b) However, retailers were not successful in exerting pressure on manufacturers to absorb some proportion of the increased costs (ie by reducing their margins).

- 7.96 We consider that there are several reasons why manufacturers, especially the market leader Danone, hold a strong position in negotiations with retailers. First, as noted by one retailer, most manufacturers in this market are ‘sophisticated, multi-national entities’ that hold ‘sizeable and established positions in this category’ – as discussed above, concentration is high with limited prospects for entry (including retailers’ own entry with own-label products).
- 7.97 Second, as retailers emphasised in their submissions, customers display strong brand loyalty. This results in there being certain ‘must-carry’ products that retailers have little choice but to stock, reducing their bargaining power. One retailer submitted that, ‘Some infant formula products sold under established and trusted brands are simply “must-have”’. Another retailer told us that, ‘Over the last three years (since January 2021) the core of our range has remained the same, reflecting stable customer demand and the very low levels of switching between brands’ and that ‘customers are extremely brand loyal once they have found a product that works for them – they are much more likely to switch retailer to find the product they need, than to switch product brand’.
- 7.98 Third, since no retailer (bar two) currently produces an own-label product, they have limited insight into the costs faced by manufacturers. One retailer explained to us that, ‘We have limited visibility into total upstream input costs’ and ‘while we strive to verify cost prices presented to us by the suppliers, our ability to meaningfully interrogate and challenge these is often limited’. Likewise, another retailer said that, ‘While we try our best to verify any cost price increases ... we do not have full visibility on the underlying costs and as such these are harder to verify than products with clearer input costs’.
- 7.99 A final point to note is that some retailers’ internal documents suggest that the degree of bargaining power differs between manufacturers, with Danone as the market leader appearing to hold a stronger position than its competitors.
- 7.100 In addition to these limitations to retailers’ *ability* to constrain price increases by manufacturers, we also consider they have limited *incentive* to do so, due to weak competition at the retail level – this is covered further in the sub-section, ‘Competition between retailers’ later in this section.

## Provisional conclusions on competition between manufacturers

7.101 Based on the above evidence, plus the earlier evidence relating to prices and gross profit margins (in Section 4 Market Outcomes), our provisional conclusions with respect to competition between manufacturers are:

- (a) Manufacturers judge that consumers are relatively unresponsive to price movements in infant formula and follow-on formula. Consistent with this, the intensity of price competition between manufacturers has historically been weak. Manufacturers appear to have faced little constraint in passing on cost inflation to consumers via retailers over the past few years.
- (b) Danone is the market leader and exhibits strong pricing power. In the period we have reviewed, it has acted as a constraint on Nestle, Kendal, and HiPP, while these other competitors have exerted limited constraints on each other or on Danone.
- (c) It is possible that increased competition from Kendal has triggered price decreases of Aptamil in 2024. If this is the case, this response has taken time to occur and, to date, has been limited (to this brand only). Furthermore, given that Danone intended for its recent price cuts to be temporary, it is unclear whether – absent other significant market changes – these price decreases will continue indefinitely, particularly since these developments have taken place during a period of increased government (including CMA) and press scrutiny of formula milk prices.
- (d) Aside from price, manufacturers do seek to compete on product differentiation and innovation to some extent, and this has yielded some genuine benefits for parents and their babies. However, we consider that manufacturers' efforts here are primarily oriented towards signalling trustworthiness and superiority via intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products, and thereby building brand reputation, in a context where parents are likely to find it difficult to assess product quality or to access clear, accurate, and impartial information. This helps manufacturers to justify price premiums, including via the tiered price architecture we observe in the market.
- (e) While we have seen some examples of retailers pushing back, manufacturers' pricing power does not appear to have been strongly constrained by retailers' buyer power over the past few years. Manufacturers' strength is primarily due to brand loyalty, limiting retailers' ability to bargain over 'must-carry' products. Manufacturers were able to implement a series of substantial CPIs over 2022 and 2023, which retailers largely accepted and

passed on to parents (see further discussion of competition between retailers in the sub-section ‘Competition between retailers’ later in this section).

- (f) In line with its overall position in the market, Danone appears to hold the strongest bargaining position vis-à-vis retailers. Kendamil’s market share has continued to grow rapidly; looking ahead, it is possible that Danone’s market power may be increasingly challenged by Kendal.
- (g) However, to date, we have not seen good evidence that manufacturers have responded to Kendal’s growth by substantially reducing their gross margins, or that Kendal has fundamentally disrupted the competitive dynamics in this market.

## Competition between retailers

7.102 Next, we discuss the extent and nature of competition between retailers. In line with the analysis presented in Section 4 Market outcomes: Retail pricing, we have focused our assessment on the top five retailers of formula milks (Asda, Boots, Morrisons, Sainsbury’s, and Tesco) plus three discounters (Aldi, Iceland, and Lidl), which together accounted for [60-70%] of manufacturers’ aggregate infant formula and follow-on formula revenues in 2023.<sup>297</sup> We have assessed evidence from manufacturers’ and retailers’ submissions, internal documents, and data on prices, revenues and costs.

7.103 The sub-section is structured as follows:

- (a) Price competition
- (b) Non-price competition
- (c) Provisional conclusions

## Findings

### *Price competition between retailers*

7.104 Most retailers submitted that they monitor and take into account competitors’ pricing (based on publicly available information), amongst several other factors, when setting their own retail prices for formula milks.<sup>298</sup> Several retailers also noted that the cost price (ie the price paid to the manufacturer) affects their retail

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<sup>297</sup> CMA analysis.

<sup>298</sup> With regard to Iceland specifically, it submitted that up until August 2023, its strategy was to undercut the market [§] and price-match key leaders [§] on other brands. However, in August 2023, Iceland substantially cut its prices [§], a strategy which it appears to have maintained since then. See also: [Iceland slashes price of baby formula to combat cost of living crisis | UK News | Metro News](#) and [It’s time to change the law on infant formula – About Iceland](#), accessed 17/10/24.

price. Four retailers explicitly said that they consider manufacturers' RRPs when setting prices, one of which explained that it considers RRPs as a 'proxy to estimate / gauge the retail price that may be adopted by some of our competitors ... We may use this as a factor in our final retail pricing decisions'. When asked the extent to which manufacturers influence retail prices, no retailer told us it felt under pressure to adhere to RRPs.

- 7.105 However, we have found that retail prices for infant formula have tended to closely follow RRPs.<sup>299</sup> As a result, as noted in Section 4 Market outcomes: Retail pricing, there has been limited variation in prices across retailers. In our review of internal documents, we did not find evidence of resale price maintenance. Rather, we consider that this close tracking of RRPs is likely to be due to a lack of incentive on the part of retailers to price below the RRP.
- 7.106 One likely reason for this is that regulations do not permit retailers to advertise or promote the price of infant formula, and therefore it would be difficult to alert consumers who do not normally shop at a particular retailer that they could find their preferred product cheaper there.<sup>300</sup> However, given the outcomes we see in follow-on formula (discussed below), for which promotions and advertising of prices are permitted, we consider it likely that there are also other factors at play, beyond simply the inability to advertise prices. For example, it is possible that parents of babies may be unusually time-pressured, and/or that their weak sensitivity to the price of formula products at brand level has a behavioural 'spillover' effect, in both cases reducing their propensity to shop around (for a given brand) at retail level.
- 7.107 For follow-on formula, price promotions are permitted and used, though they are mostly instigated and funded by manufacturers rather than retailers.<sup>301</sup> We therefore observe greater volatility in the retail price of follow-on formula due to these temporary promotions. However, broadly speaking, the base (non-promotional) prices of follow-on formula products have tended to be co-priced with the equivalent infant formula product, meaning there has been limited deviation from RRPs and limited variation across retailers.<sup>302</sup> We consider it likely that one reason for setting the base (non-promotional) price of follow-on formula the same as that of infant formula is to avoid diverting sales from the latter to the former (for babies aged 6-12 months, for whom the two products are substitutable).

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<sup>299</sup> Based on CMA analysis comparing monthly retail pricing data submitted by retailers and RRPs submitted by manufacturers for the period January 2019 to May 2024.

<sup>300</sup> These regulations do not apply to follow-on formula or growing-up milk.

<sup>301</sup> As discussed above in 'The role of price promotions in upstream competition'.

<sup>302</sup> There are a few exceptions to this. In particular, Boots often priced follow-on formula cheaper than the equivalent infant formula during the period January 2019 to May 2024. Asda also priced selected follow-on formula brands cheaper than their equivalent infant formula up until early 2021. For further detail, see Appendix D Pricing analysis methodology and additional provisional findings.

- 7.108 Our review of retailers' internal documents<sup>303</sup> suggests that there is a degree of monitoring and consideration of competitors' prices. Looking at the period from 2020 to 2023 (which was generally a period of rising prices), we found the following examples:
- (a) In an October 2020 document, one retailer highlighted that it was selling a particular formula product at 50 pence cheaper than one of its closest competitors and noted that another competitor 'continues to match our pricing on formula'.
  - (b) In a December 2020 document, one retailer monitored the price of Aptamil, Cow & Gate, and Little Steps products against those at another retailer and identified improving its own pricing vis-à-vis this rival as a 'key opportunity'.
  - (c) The same retailer also submitted a more recent document from January 2024 showing analysis comparing its formula pricing to that of another retailer.
  - (d) In one example of communications with a manufacturer in February 2023, a retailer emphasised its desire to 'close the gap' with another retailer on the price of a certain brand of ready-to-feed formula.
  - (e) In another example from February 2024, the same retailer told another manufacturer that it wanted to ensure that its 'products remain commercially competitive in the market' and that the 'value index' (comparing its prices to those of a rival retailer should remain '100 at all times on powders and liquids lines'.<sup>304</sup> This is consistent with this retailer's submission that it tracks its pricing relative to other retailers – particularly one retailer as a proxy for the wider market – in a 'value index', both for groceries overall and for specific categories.
  - (f) Internal documents submitted by a discount retailer shows that it routinely monitors the percentage discount it offers compared to the retailer(s) it considers its nearest competitor(s).<sup>305</sup> Several documents between July 2021 and March 2023, which relate to internal requests for approval for proposed retail price changes on infant formula, highlight the old versus new implied price discount against its nearest competitor(s). However, we note that the retailer decreased this discount with every successive price change during

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<sup>303</sup> We received relevant internal documents from Aldi, Asda, Boots, Lidl, Sainsbury's, Tesco, and Morrisons. Note that the documents were submitted in response to defined parameters and therefore may not fully reflect the totality of retailers' internal documents discussing price-setting and monitoring of competitors with respect to the supply of formula milks.

<sup>304</sup> I.e. the price at the retailer should not exceed that of its rival retailer.

<sup>305</sup> This is consistent with this retailer's submission to us that it targets a [~~3~~] discount across a whole basket of 'typical' everyday items compared to the lowest priced of the traditional UK supermarkets, and that it seeks to maintain a price leadership position, including specifically on infant formula.



this period [from [X]% to [X]%), and also was able to take advantage of the exit of a particular brand to increase its price during 2021.<sup>306</sup>

- 7.109 However, overall, we found little evidence that retailers have made significant efforts to challenge their competitors on price.
- 7.110 In particular, we have seen notably few examples of retailers choosing to absorb (all or part of) the successive CPIs implemented by manufacturers between 2021 and 2023, in an attempt to undercut rivals. Our review of retailers' internal documents indicates that, over the past few years, retailers have largely accepted CPIs and passed these on to consumers, in order to maintain constant (or near-constant) retail margins. For example:
- (a) In March 2021, an email exchange within one retailer indicated that, following a [5-10%] CPI by one manufacturer it intended to move to the new RRP, which would enable it to maintain a consistent margin [of [X]%).
  - (b) In February 2022, another retailer discussed internally a [5-10%] proposed CPI by a manufacturer, stating that 'Impacts from the CPI to [the retailer's] profitability are to be fully mitigated by retail price increases'.
  - (c) In [X] 2023, a retailer discussed a CPI of [10-20%] from one manufacturer, where the assumption was that the retailer would 'flow the [X]' – we interpret this as meaning pass a [X] retail price increase on to consumers.
  - (d) In January 2023, another retailer discussed a CPI from the same manufacturer, stating that, 'To protect... profitability we will need to increase the base retail selling prices across the impacted parts of the range'.
- 7.111 In addition, our review of dozens of Joint Business Plans and similar agreements between manufacturers and retailers (during the period 2021 to 2024) suggests that retailers' profit margins were forecast to remain fairly stable each year.
- 7.112 These findings are consistent with our analysis of retailers' profit margins (see Section 4 Market Outcomes: Margins) where we found that retailers' gross margins on infant formula have broadly remained flat over the past five years.
- 7.113 While, overall, we have found weak price competition between retailers, there are two significant exceptions:
- (a) In August 2023, Iceland publicly announced that it was substantially reducing its formula prices, stating that this was due to customers' struggle to afford the rising price of formula amid the cost-of-living crisis.<sup>307</sup> This

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<sup>306</sup> Ibid.

<sup>307</sup> See: [Iceland slashes price of baby formula to combat cost of living crisis | UK News | Metro News](#) and [It's time to change the law on infant formula – About Iceland](#), accessed 17/10/24.

announcement is consistent with the price data submitted by Iceland, which shows that all its formula prices fell between July and August 2023 (with the magnitude of the reduction on different products ranging from 6% to 28%).<sup>308</sup> Between August 2023 and July 2024, Iceland's prices have remained flat for most brands (and fallen further for Aptamil). Iceland submitted that, since August 2023, its strategy has been to sell formula products at cost price. However, we have not seen evidence that Iceland's change of pricing strategy in August 2023 triggered any obvious price response from other retailers around that time.<sup>309</sup>

- (b) In February 2024, Iceland introduced Little Steps first infant formula 800g powder and priced it at £7.95 – well below the RRP of £[~~8~~].<sup>310</sup> Based on the retail price data we have analysed, Iceland's move quickly triggered a price response on Little Steps first infant formula by most other major retailers (with the exception of Boots). We have seen evidence from at least one retailer's internal documents that its price cut was a direct response to Iceland's pricing. This is consistent with the pricing data submitted by this retailer.

7.114 As shown in Section 4 Market outcomes: Retail pricing, in 2024 there have also been price cuts on 800g powder tubs and individual ready-to-feed bottles for several other brands, including Aptamil, Aptamil Advanced, Cow & Gate (follow-on formula only), and SMA (only at Tesco). According to evidence from Danone's submission and internal documents, the price cuts on Aptamil and Aptamil Advanced were instigated by Danone's reduction to its cost price and RRP, rather than by retailers (see discussion of this in the sub-section Competition between manufacturers earlier in this section). The SMA price cut appears to have occurred only at Tesco. The source and precise sequencing of the Cow & Gate price cut on 800g and 200ml follow-on formula are not clear, but appear to have been instigated by retailers, given that Danone had not reduced RRP for these products as of May 2024.<sup>311</sup>

7.115 We are cognisant that these recent price developments have taken place during a period of increased government (including CMA) and press scrutiny of formula prices, and at the time of a marked slowdown in the rate of inflation across the economy. This calls into question the extent to which they signal a change to the underlying competitive conditions in this market.

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<sup>308</sup> Between July and August 2023, Iceland also introduced two new formula products at a price lower than their respective RRP – see more below.

<sup>309</sup> Iceland's infant formula monthly sales volumes did increase substantially in 2023 and 2024; however, these price changes occurred around the same time that it began stocking a greater range of products across more stores. It is therefore not possible to isolate the effect of the price changes alone on its sales volumes.

<sup>310</sup> CMA analysis of sales data submitted by Iceland.

<sup>311</sup> According to RRP data submitted by Danone.

### *Non-price competition between retailers*

- 7.116 As described in the sub-section ‘Competition between manufacturers’ earlier in this section, retailers and manufacturers conduct annual planning discussions to determine the list of products to be supplied and the commercial arrangements for these. Our review of dozens of such agreements and related documents suggests that there is a heavy focus on the presentation and marketing of formula products.<sup>312</sup> This may include distribution across and within stores (eg how many and which stores, positioning and presentation within bays), shelf space, promotional activity, and point-of-sales media.
- 7.117 Manufacturers actively seek to influence such outcomes, and often provide dedicated incremental funding for at least some of these activities to the retailer. However, retailers told us that the positioning and presentation of products is at their discretion.
- 7.118 Based on retailers’ submissions and internal documents, larger supermarkets tend to approach the in-store display of formula products in a similar way.<sup>313</sup> This includes organising products first by brand (known as ‘brand blocking’), then by stage (eg ‘Stage 1 – first infant formula; ‘Stage 2’ – follow-on formula; and so on), and then by format (eg powders versus liquids), while also following the common merchandising principle of positioning cheaper ranges on lower shelves and more expensive ranges on higher shelves. There are some exceptions; for instance, retailers often group special milks together in a dedicated shelf space (ie not grouped with the rest of the brand), and there may be separate feature spaces for follow-on formula and growing-up milks when these are on promotion.
- 7.119 In documents, we have seen instances of manufacturers emphasising to retailers the importance of ordering products by stage explicitly in order to drive conversion along the ‘journey’ from infant formula to follow-on formula to growing-up milk. We have also seen documents in which manufacturers ‘encourage repertoire’ – ie encourage retailers to group liquids next to powders within each brand/stage position, in order to facilitate more consumers switching from (lower priced) powders to (higher priced) liquids.
- 7.120 It is possible that expanding the total (‘macro’) space dedicated to formula milks (ie reallocating space which was previously allocated to other types of products) may also help retailers compete.

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<sup>312</sup> We requested all annual Joint Business Plans, similar agreements, and related documents/correspondence between retailers and each of the four largest manufacturers for the period 2021 to 2024.

<sup>313</sup> Smaller stores (eg convenience stores) and discount retailers typically stock a much smaller range of formula products.

7.121 Marketing events, such as ‘baby events’ (which some major retailers organise across the baby category once or twice a year), also appear to be a key focus for retailers when thinking about winning customers.<sup>314</sup>

### **Provisional conclusions on competition between retailers**

7.122 The evidence we have reviewed above (including the retail price outcomes described in Section 4 Market Outcomes) indicates that price competition between retailers has historically been weak. One likely reason for this is retailers’ inability to promote any price reductions on infant formula, due to regulations.

7.123 Promotions and advertising of prices are permitted on follow-on formula, but the evidence does not indicate that retail-level price competition in follow-on formula is significantly stronger than in infant formula, suggesting that there are also other factors at play, beyond simply the inability to advertise prices. We consider that these factors are likely to be a combination of:

- (a) Consumer behaviour: weak sensitivity to price on formula products in general,<sup>315</sup> which affects a parent’s propensity to shop around different retailers; and
- (b) Manufacturer and retailer behaviour: lack of incentive to set the base price of follow-on formula below that of the equivalent infant formula to avoid cannibalising sales of the latter (for babies aged 6-12 months for whom the two products are substitutable), and possibly a reluctance to reduce the base price of follow-on formula to avoid the implication of reduced quality (given the knowledge that many parents treat price as a proxy for quality).

7.124 Rather than competing strongly on price, retailers – influenced by manufacturers – have tended to focus on marketing activity as the key route to increase sales of formula milks. This includes the positioning and presentation of products, point-of-sales media, and promotional events – all of which strongly shape the ‘information environment’ experienced by parents.

7.125 While price competition between retailers generally has been weak, and the [X] retailers’ gross margins we analysed, in aggregate and weighted by revenue, have remained stable (within a range of 20-24%) between 2019 and 2024, they have tended to be lower than their gross margins arising from their supply of other grocery products. We consider this (at least partly) reflects the strong bargaining position of the manufacturers, particularly the largest ones.

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<sup>314</sup> [X]. [X]. This [X] [retailer] document showcases the idea of a [X] [manufacturer] ‘in store experiential’ event at selected [X] stores, at which [X] experts would be present in person to provide ‘support and advice’ to customers.

<sup>315</sup> This could be caused by parents of infants being unusually time-pressured, and/or a behavioural ‘spillover’ effect of parents already not being in the habit of focusing on the price of formula products (at brand level).

7.126 In our view, a distinguishing feature of this market is the *interaction* between weak competition upstream and downstream. Retailers are more likely to accept and pass on CPIs (softening upstream competition) if they know that other retailers are likely to do the same (an outcome of soft downstream competition), which is compounded by retailers' limited visibility into input costs (as discussed above).

## 8. Possible measures to address our emerging concerns

8.1 In this section we set our provisional views on the degree to which the infant formula market displays the characteristics we would expect to see in a well-functioning market, and the outcomes we would expect to see; our provisional assessment of the current market; and possible measures for consideration by governments to help bring about better outcomes for consumers.

### A well-functioning market and the outcomes we are observing

8.2 In our view, for the many parents who use infant formula, a well-functioning market would have the following characteristics:

- **Clarity** for parents that **all infant formula products meet the nutritional and safety needs of their babies** and that **cheaper products are not nutritionally inferior**.
- **Clarity** for parents about the **features that differentiate brands and that these are not related to nutritional need**.
- **Easy access to clear, accurate and impartial information** that enables parents to come to an early and informed decision, with relatively little effort, about which product(s) best meets their needs and preferences.
- **Effective competition between multiple infant formula manufacturers** to offer infant formula products with features parents can easily interpret and verify, at competitive prices, and an ability for newer entrants to challenge incumbents if they offer a competitive product.
- A **well-designed and robustly enforced regulatory regime**, including where branding and promotion of follow-on formula products doesn't undermine the rules and desired outcomes for infant formula.
- **Effective price competition between retailers**, with parents easily able to compare retail prices for their preferred product to get the best deal.

8.3 If the market were functioning in this way, we would expect to see the following market outcomes:

- We would expect to see indications that the market is dynamic, including lower barriers to entry and expansion, with it being feasible for newer manufacturers to gain market share if they offer a competitive product, and incumbents responding to the threat of entry and expansion, including by competing on price;

- We would expect price and margins data, taken together with evidence of manufacturers' pricing strategies, to suggest that manufacturers were responsive to the prices of their competitors;
- At times of rapidly rising costs, on the assumption that manufacturers' and retailers' margins were not already low, we would expect to see them absorbing some of the higher costs into their margins for longer in order to maintain a competitive price and maintain their market share, rather than consumers bearing the majority or all of the cost increases; and
- At retail level, we would expect to see competitive infant formula prices, with parents more responsive to price, and choosing products with features that they can easily interpret and verify.

8.4 Our provisional assessment is that the market is not delivering these outcomes and indicates that:

- At manufacturing level**, there are several significant barriers to entering the market. Furthermore, the one instance of successful entry and scale-up we have observed has not, to date, prompted a widespread price response by incumbents.
- Price competition between manufacturers in this market is weak.** Manufacturers judge that parents are unresponsive to price movements and, as such, seek to compete by differentiating their products rather than on price. We are concerned that in this market, given its specific features, manufacturers' efforts on quality and innovation are in significant part oriented to signalling trustworthiness and superiority via intangible and/or non-verifiable benefits, rather than specific and verifiable points of difference about particular products.
- Infant formula may be being indirectly promoted, strengthening brand influence.** We have identified concerns about compliance with regulations on marketing and advertising requiring infant formula and follow-on formula to be clearly distinct from one another. This means that infant formula may be being indirectly promoted via a 'halo effect' from follow-on formula.
- Parents lack timely, clear, accurate and impartial information** that enables them to come to an informed decision, with relatively little effort, about which product(s) best meet their needs and preferences. Instead, brand influence plays an outsized role in decision-making and product differences signalled by manufacturers, including through on pack messages, vary in how easily they can be assessed by parents.
- Price competition between retailers in this market is weak.** Over the past few years, retailers have largely accepted CPIs and passed these on to

parents. This lack of incentive to compete on price is likely to be driven by the restriction on advertising or promoting infant formula prices, and by the lack of price sensitivity of parents, to the point of doing minimal shopping around for their preferred brand.<sup>316</sup> Retailers appear to have placed little constraint on manufacturers in passing on cost inflation to parents over the past few years.

8.5 The **regulatory framework** is one key driver of the outcomes we have seen. We recognise the necessity of a strict regulatory framework to achieve governments' public health objectives of ensuring formula milks provide essential nutrients for babies and are safe and of not discouraging breastfeeding. However, we consider that aspects of its design, and challenges around its enforcement, are leading to poor outcomes from a consumer point of view.

- On the one hand, it strongly disincentivises price competition, and creates barriers to entry. These contribute to persistent high margins, in aggregate and weighted by revenue, at manufacturing level and a lack of downward pricing pressure from entry and expansion.
- On the other hand, it incentivises a disproportionate reliance on brand-building, whereby manufacturers seek to signal their brands' trustworthiness and superiority via intangible and/or non-verifiable benefits as a main way to encourage parents to choose their product, and to cross-market (ie increase sales of their infant formula via the marketing of follow-on formula and growing-up milks).
- Combined with **entrenched patterns of consumer behaviour** in this market, this creates further barriers to entry and expansion, and generates significant marketing costs that are likely to contribute to the prices parents pay for infant formula.

8.6 Given the above, and in the face of substantial price increases over the past few years, we are concerned that parents are overpaying for infant formula. We are therefore setting out a number of possible measures for consideration by governments to help bring about better outcomes for parents.

## Approach

8.7 In our August 2024 update, we said that our concerns in the market would be best addressed by progressing with our market study and developing recommendations

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<sup>316</sup> Promotions and advertising of prices are permitted on follow-on formula, but the evidence does not indicate that retail-level price competition in follow-on formula is significantly stronger than in infant formula. We consider it likely that this is due to a lack of incentive to set the base price of follow-on formula below that of the equivalent infant formula to avoid cannibalising sales of the latter (for babies aged 6-12 months for whom the two products are substitutable), and possibly a reluctance to reduce the base price of follow-on formula to avoid the implication of reduced quality (given the knowledge that many parents treat price as a proxy for quality).



to governments to improve market outcomes, rather than moving to an extensive market investigation.

- 8.8 We want our final recommendations to drive better outcomes for parents, without compromising the compositional standards and safety of infant formula and follow-on formula or undermining governments' wider policy objectives for this market, including not discouraging breastfeeding. Accordingly, this interim report sets out a range of possible measures that could help to reduce prices and support effective consumer choice, through increasing manufacturers' and retailers' incentives to compete on price and rebalancing the information environment. Reflecting the acute issues for some parents that high formula milk prices can cause, we also set out some more significant backstop interventions that governments could, in principle, make with the aim of bringing prices down more directly, although these are not actively recommended at this stage.
- 8.9 In the coming months, we want to engage closely with governments in all parts of the UK as we work towards a set of final recommendations that is consistent with their objectives. We also welcome the views of wider stakeholders on these measures, including their potential impact on prices and consumer choice, and any wider issues they may raise, and whether they would be effective and proportionate in addressing the issues we have identified.
- 8.10 We consider that the measures we are proposing would not compromise the compositional standards and safety of infant formula. Further, it is our provisional view that a number of measures set out below are not inconsistent with, and may potentially support, governments' core policy objective of not discouraging breastfeeding. For example, the proper enforcement of rules to prevent cross-promotion of infant formula via follow-on formula (set out in the paragraphs below), or the strengthening of these rules (set out in the paragraphs below), could support stronger price competition while also reducing opportunities to induce infant formula purchases.
- 8.11 In other areas, there may be trade-offs to consider. For example, allowing retailers to publicise their price reductions of infant formula could help support stronger retail price competition (set out in the paragraphs below), but governments will wish to consider the extent to which this could serve to induce infant formula purchases, and therefore potentially be inconsistent with the policy objective of not discouraging breastfeeding. We intend to explore these trade-offs with governments as we work towards our final report.

- 8.12 The evidence we have collected, including on supplier behaviour and consumer choice,<sup>317</sup> will help governments to assess the nature and extent of any policy trade-offs arising from changes to the regulatory framework.

## Possible measures

- 8.13 We set out below our provisional thinking on four categories of measures which could be introduced to achieve improve outcomes for parents, noting that their impact is likely to be greater if introduced in combination:
- (a) Information and supply in healthcare settings
  - (b) Information and price promotion in retail settings
  - (c) Clarifying, monitoring and enforcing the existing regulations
  - (d) Strengthening labelling and advertising rules.
- 8.14 We then set out more significant backstop interventions that governments could, in principle, make with the aim of bringing prices down directly (although these are not actively recommended at this stage), namely:
- (a) Price controls
  - (b) Public provision.

## Information and supply in healthcare settings

### Information in healthcare settings

#### *Information given to parents and support for healthcare providers*

- 8.15 In any scenario, we consider that there is a strong case for healthcare providers (for example, the NHS) to raise the profile of clear, accurate and impartial information to help parents make well-informed decisions on what brand of formula to use.
- 8.16 Our research indicates that many parents make decisions over what brand of formula to use based on the information they are given in healthcare settings.
- 8.17 It also indicates that many parents may find **clear, accurate and impartial information from healthcare sources**, such as the NHS, in hospitals and other healthcare settings (eg in ante natal classes) to be helpful when deciding which

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<sup>317</sup> The impact of measures will depend on a range of factors, including how they are designed, how significantly they alter the information environment, and the other measures they are introduced with.

infant formula to purchase and weighing up factors such as price and manufacturers' claims.

- 8.18 We note that NHS websites already provide information on formula feeding, including on the nutritional sufficiency of all infant formulas (as highlighted in the paragraph below), and consider that this messaging could be provided prominently and consistently at key decision points in hospitals and other healthcare settings. This could be accompanied by specified information on the **range and unit prices of infant formula**. It might also include a clear and factual **assessment of some of the claims made by manufacturers on their packaging**.
- 8.19 We consider that this information could have a greater impact if **healthcare providers were also given more support** with regard to:
- (a) Understanding their potential role in supporting parents' purchasing decisions, in a manner that does not cut across the policy objective of not discouraging breastfeeding;
  - (b) Effectively communicating the message that all infant formula products will meet babies' nutritional needs (and being clear that current NHS advice is that 'it does not matter which brand you choose, they'll all meet your baby's nutritional needs, regardless of price'<sup>318</sup> and 'there are different brands of infant formula but there is no real difference between them as all first milks must meet the same nutritional standards'<sup>319</sup>).
  - (c) Providing timely advice which avoids decisions on what infant formula brand to use having to be made when parents are in particularly vulnerable and/or time-pressured situations.<sup>320</sup>
- 8.20 In addition, official information from healthcare providers could be provided to parents in hospitals and other healthcare settings that **the use of follow-on formula is optional**. For example, the NHS advice that 'research shows that switching to follow-on formula at six months has no benefits for your baby'<sup>321</sup>.
- 8.21 Enhancing this measure could include **healthcare providers giving parents information about the price** of a selection of infant formula products which are available in the market. This could be in the form of an information portal hosted on an NHS or other impartial/well-known website with a comparison table of brand options and an estimate of the total cost per baby from birth to 12 months

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<sup>318</sup> NHS England, How to use formula, [How to use formula - NHS](#), accessed 17/10/24.

<sup>319</sup> Public Health Scotland, Types of Infant Formula: <https://www.publichealthscotland.scot/media/19537/formula-feeding-how-to-feed-your-baby-safely-in-english.pdf>, accessed 17/10/24.

<sup>320</sup> For example, parents may be more receptive to being given information when birth plans or preferences are being prepared and expectant parents are considering the use of infant formula. This would help them to be more prepared in case they need to use infant formula. Information could also be given where parents have already made a decision to use infant formula or combination feed but not decided which brand to use.

<sup>321</sup> NHS, Types of formula, [Types of formula - NHS](#), accessed 17/10/24.

(assuming that they are not combination fed). This measure could potentially be expanded further by accompanying pricing information with **factual independent information about the benefits or otherwise of ingredients added by manufacturers to infant formula**

- 8.22 These measures should give some parents the confidence that cheaper products are suitable for meeting the nutritional needs of their baby, and as a result encourage some to purchase cheaper products.

### **Supply in healthcare settings**

- 8.23 We observe in Section 5 Consumer behaviour that brand visibility in hospital settings can be highly influential in parents' choices of infant formula, outweighing the provision and influence of clear, impartial information. Measures could be taken to rebalance the information environment in healthcare settings by reducing the influence of brands.
- 8.24 We note that the WHO Code makes recommendations over how manufacturers should interact with healthcare professionals and many hospitals are accredited with the UNICEF UK Baby Friendly Initiative, which seeks, among other objectives to ensure there is no promotion of infant formula in maternity and neonatal settings<sup>322</sup> (as discussed in Section 7 Competition in the market: Barriers to entry and expansion).
- 8.25 One option is to require **infant formula to be presented in standardised packaging in healthcare settings**, to reduce the influence of brands on decisions over what formula to use.
- 8.26 While requiring that all infant formula is presented in standardised packaging in healthcare settings is likely to reduce the influence of brands at that key decision point, we observe that parents would still require objective information to enable them to make decisions when they leave hospital/healthcare settings. Therefore, the impact of this measure alone in supporting parents to make good decisions may be limited.
- 8.27 Another potential measure to reduce the influence of brands in healthcare settings is to implement **balanced procurement**<sup>323</sup> to ensure that parents are given a wider choice of brands where possible, or that brands are rotated.
- 8.28 Given that healthcare professionals are seen by parents as trusted advisors and can be present at the point at which parents are considering their options, it is our

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<sup>322</sup> UNICEF, [Guide to the UNICEF UK Baby Friendly Initiative Standards](#), p9, accessed 10/17/24.

<sup>323</sup> Balanced procurement means a system established by healthcare settings which aims to maintain a range of infant formula brands in their inventories which can be offered to parents. By contrast, we understand that many healthcare settings currently make their procurement decisions based mainly on price and, as a consequence of this, typically only hold one or two brands in their inventories.

provisional view that this measure could be effective in reducing the influence of a small number of brands which have been procured by hospitals on parents' purchasing decisions away from healthcare settings.

- 8.29 We have considered the findings of a market inquiry into the supply of formula milk in Singapore carried out by the Competition Commission of Singapore,<sup>324</sup> including the recommendations made. We observe that there appear to be some similarities between the markets in Singapore and the UK but also some significant differences (for example, whereas over half of babies in Singapore were born in private hospitals<sup>325</sup>, the significant majority of babies in England are born in NHS hospitals<sup>326</sup>). The inquiry recommended that there was a review of the sponsorships and payments that manufacturers can provide to the hospital channels and the link between such sponsorships and payments to the 'milk rotation schedules'.<sup>327</sup> The CCCS told us that, in its view, one of the most successful measures was in relation to curbing these 'hidden hospital practices and brand sponsorships'.
- 8.30 The regulations applicable in the UK restrict the advertisement of infant formula<sup>328</sup> and the provision by manufacturers and distributors of infant formula of free or low-priced products, samples or any other promotional gifts, either directly or indirectly through the healthcare system or health workers.<sup>329</sup> Therefore, we consider that manufacturers are already not permitted to make payments to healthcare settings in return for enhancing their brand visibility. Nevertheless, this measure would go further by asking healthcare settings to actively maintain a wider range of infant formula brands in their inventories.
- 8.31 As described Section 7 Competition in the market: Supply to the NHS, we observe that manufacturers have consistently sold below cost to the NHS. In addition, several manufacturers refer in their internal documents to engaging with healthcare providers using a variety of channels.
- 8.32 We consider that manufacturers believe that parents may be influenced by products they see in healthcare settings and recommendations given by

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<sup>324</sup> Competition Commission of Singapore (2017), Market Inquiry into the supply of formula milk in Singapore, [Market Inquiry](#).

<sup>325</sup> Competition Commission of Singapore (2017), Market Inquiry into the supply of formula milk in Singapore, [Market Inquiry](#), p42.

<sup>326</sup> NHS England, [NHS Maternity Statistics, England, 2022-23 - NHS England Digital](#).

<sup>327</sup> The [Market Inquiry](#) by the Competition Commission of Singapore refers to manufacturers being allocated periods of time when their brands are given to babies in private hospitals in Singapore.

<sup>328</sup> [Commission Delegated Regulation \(EU\) 2016/127](#), Article 10 (1) provides that 'advertising of infant formula shall be restricted to publications specialising in baby care and scientific publications'. Article 10 (2) provides that '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'.

<sup>329</sup> [Commission Delegated Regulation \(EU\) 2016/127](#), Article 10 (3).

healthcare providers. Further, manufacturers use this receptiveness as an opportunity to build brand awareness.

- 8.33 It is our provisional view that more balanced procurement in healthcare settings could require some trade-offs to be made which would need to be weighed up against the potential benefits. In particular, it could result in healthcare settings having some additional costs as a consequence of:
- (a) No longer receiving discounted supplies from manufacturers. This assumes that a key reason for the manufacturers supplying infant formula to healthcare providers at a discount is to build their brand awareness and they respond to this measure by removing or reducing this discount.
  - (b) Having to maintain larger inventories so that they can rotate brands.
  - (c) Additional bureaucracy involved in operating a more complicated procurement and distribution system.

## **Information and price promotion in retail settings**

### **Information in retail settings**

#### *Information given to parents*

- 8.34 The evidence we have obtained shows that many parents make their initial decision on what brand of infant formula to purchase in retail settings and are subsequently unlikely to switch to a different brand. Therefore, we consider that information provided at the point of purchase in retail settings could influence parents' immediate and future purchasing decisions.
- 8.35 We consider that parents would be more supported in making well-informed decisions regarding what infant formula to purchase, and be more confident that cheaper products are suitable for meeting the nutritional needs of their baby, if they were given **clear, accurate and impartial information on the nutritional sufficiency of infant formula in retail settings** (for example, on retail shelves next to infant formula products).
- 8.36 A similar measure would involve requiring manufacturers to display this **information directly and prominently on the labelling** of infant formula products.
- 8.37 The main message for parents would be that all infant formula products (irrespective of the price and brand) will meet a baby's nutritional needs (as noted

above<sup>330,331</sup>). It could be **supplemented with a clear and factual assessment** of some of the health and nutrition claims made by manufacturers on their packaging and/or a comparison of unit prices. We consider that this information could be made available online, and can be kept up to date, accessible via a QR code at the point of sale.

- 8.38 In addition, official information from trusted sources (eg the NHS) could be provided to parents on shelves in retail settings that **the use of follow-on formula is not necessary**. For example, the information from Scotland's national health information service that 'first stage infant formula is all your baby needs. There's no advantage at any stage to using a second-stage or follow-on infant formula.'<sup>332</sup> NHS England similarly states that 'Research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to have first infant formula as their main drink until they are 1 year old.'<sup>333</sup>

### *Shelf positioning*

- 8.39 Another potential measure to reduce indirect promotion is setting **standards on shelf positioning**. For example, requiring that infant formula is displayed more prominently and separately from other formula milk products.
- 8.40 The rationale for this measure would be to make it easier for parents to compare across infant formulas and to reduce cross-promotion between follow-on formula and infant formula (the 'halo effect') as a result of branding similarities.
- 8.41 We note that there are various types of retail store, with different locations, sizes and product mixes. The design of this measure would need to take these differences into account.

### **Publicised price reductions**

- 8.42 We consider that effective competition relies on parents being able to compare accurately the price and quality of products in a way that drives good decisions.
- 8.43 As noted in Section 6 Impact of the regulatory framework and regime: Price promotions, the advertising of infant formula is restricted, as are other promotional activities. This is to avoid inducing the purchase of infant formula, so as not to discourage breastfeeding.

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<sup>330</sup> NHS, How to use formula, [How to use formula - NHS](#), accessed 17/10/24.

<sup>331</sup> Public Health Scotland, Types of Infant Formula: <https://www.publichealthscotland.scot/media/19537/formula-feeding-how-to-feed-your-baby-safely-in-english.pdf>.

<sup>332</sup> NHS inform website, Feeding with infant formula: <https://www.nhsinform.scot/ready-steady-baby/labour-and-birth/meeting-your-new-baby/feeding-with-infant-formula>, accessed 17/10/24.

<sup>333</sup> NHS, Types of formula, [Types of formula milk - NHSf](#), accessed 16/09/24.

- 8.44 In our view, it is not clear whether a retailer would breach the regulations if they were to publicise that they had reduced the retail price of infant formula for a sustained period. Similarly, manufacturers may believe that they are unable to publicise price reductions, whether or not made by them for retailers to pass on to parents.
- 8.45 It is our provisional view that, to incentivise more competition on price, **the regulations could be revised to ensure that manufacturers and retailers are permitted to publicise prices and price reductions**. In turn, this may put pressure on manufacturers' prices.
- 8.46 While governments will wish to carefully consider the extent to which this could serve to induce sales of infant formula, as noted in Section 6 Impact of the regulatory framework and regime: Price promotions, we note that the evidence we have obtained suggests that parents' overriding motivator is doing what is best for their baby, as opposed to choosing the lowest cost products, given the widely understood benefits of breastfeeding.<sup>334</sup>
- 8.47 We have seen that currently parents tend to be fairly price-insensitive in this market, and may use price as a proxy for quality; this may be taken to indicate that allowing retailers greater leeway to publicise prices and price reductions would have a limited effect on attracting customers. However, there are two potential ways in which this could allow parents to access lower prices. First, publicising of lower prices could lead some consumers to buy the same brand at a different retailer; this in turn would provide some incentives for retailers to offer more competitive pricing on a given brand. Alternatively, and coupled with the measures we are considering to give consumers greater information about the comparative merits of different brands, as discussed above, knowledge of the price differential could lead consumers to switch to a lower-priced brand.

### **Clarifying, monitoring and enforcing the existing regulations**

- 8.48 It is our provisional view that measures could be taken to improve outcomes by clarifying and strengthening how the current regime operates.
- 8.49 In particular, our current thinking is that two measures, which are explained further below, could be beneficial, these are:
- Clarifying how the existing regulations apply to online 'advertising' and providing guidance with a wide range of examples.
  - Strengthening the competent authority role.

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<sup>334</sup> Feed's response to the CMA's invitation to comment, 20 August 2024, 3.



## **Clarifying the existing regulations**

- 8.50 As we highlighted in Section 6 Impact of the regulatory framework and regime: Compliance and enforcement, there is a lack of clarity on what constitutes ‘advertising’, for the purposes of Regulation 2016/127, particularly with regards to formula milk manufacturers’ websites. Advertising is restricted with regards to infant formula but there is no clear definition of this term for the purposes of this legislation.
- 8.51 This lack of clarity has made it challenging for the ASA to monitor and ensure compliance with the CAP Code in some instances, particularly in relation to the content of formula milk manufacturers’ websites.
- 8.52 Further, we have found that a small sample of sponsored manufacturer adverts served in response to key word searches like ‘baby milk’ may breach Regulation 2016/127 where they reference, and therefore potentially advertise, infant formula (see Section 6 Impact of the regulatory framework and regime for further details).
- 8.53 Given these two concerns, and other routes to advertising which may benefit from clarity, eg social media and influencers, it is our provisional view that governments may wish to **clarify what constitutes advertising, particularly online advertising, for the purposes of Regulation 2016/127** and provide detailed guidance on a wide range of examples. This would then allow for more effective and efficient monitoring and compliance activities to take place.
- 8.54 Clarifying the extent to which advertising is restricted in the existing regulations and subsequently monitoring and enforcing these rules is likely to support the creation of a level playing field for businesses.

## **Strengthening the competent authority role**

- 8.55 As noted in Section 6 Impact of the regulatory framework and regime: Branding, labelling and cross-marketing and although it would be for the courts to determine any breach of the law, from our review we have concerns as to whether the products we examined comply with Article 6(6) of Regulation 2016/127, and the products appeared not to follow DSHC guidance requiring infant formula and follow-on formula to be clearly distinct.
- 8.56 It is our provisional view that similar branding and labelling across formula milk ranges may raise brand awareness though the marketing of follow-on and growing-up milks. As a result, many parents who are likely to be vulnerable and to rely on shortcuts may purchase more expensive formula than they might otherwise have done, particularly had they had access to timely, clear, accurate and impartial information.

- 8.57 Enhancing the competent authority<sup>335</sup> role with a particular focus on ensuring compliance with the existing rules before products are placed on the market could help to address this. Specifically, ensuring infant formula and follow-on formula labelling is clearly distinct could reduce the extent to which brand building activities in the supply of follow-on formula have a halo effect on parents' choice of infant formula brand. In-turn, this could reduce the influence of brands on parents' decision-making and help to strengthen price competition.
- 8.58 Currently, manufacturers cannot place infant formula on the market unless they have given notice to the competent authority where the product is being marketed. Notification requires the manufacturer to share a model of the product label and any other information the competent authority may reasonably request to establish compliance with Regulation 2016/127. As DHSC guidance explains, it is ultimately the responsibility of individual businesses to ensure their compliance with the law and Regulation 2016/127 states that infant formula and follow-on formula products may only be placed on the market if they comply with this Regulation.<sup>336</sup>
- 8.59 However, infant formula products can be placed on the market as soon as notification has been given by manufacturers to the competent authority. The absence of a pre-authorisation process means that products can be placed on the market before the competent authority has reviewed the material submitted which may reveal any concerns about regulatory compliance. As such, while the notification process is helpful in reducing possible breaches of the regulations, we consider that, in practice, a manufacturer might place a product on the market in respect of which a competent authority has concerns.
- 8.60 We note that subsequent enforcement of Regulation 2016/127 is a separate process, usually carried out by local authorities.<sup>337</sup> However, as noted in Section 6 Impact of the regulatory framework and regime: Compliance and enforcement, we have concerns that action is not being taken to address apparent breaches. The significant resourcing challenges of local authority trading standards services appears to be a key driver of this along with some lack of clarity regarding interpretation of the regulations.
- 8.61 To address this, one option is to **enhance the competent authority role so that its approval is required before infant formula products are placed on the market**. This would ensure that, for example, infant formula and follow-on formula labels are clearly distinct in line with the current provisions of Regulation 2016/127, before they go on retail sale. It could also reduce the call on trading standards

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<sup>335</sup> DHSC, the Scottish Government and the Welsh Government are the competent authorities for the purposes of infant formula and follow-on formula regulations for each nation in Great Britain, and the Food Standards Agency in Northern Ireland is the competent authority for Northern Ireland.

<sup>336</sup> [DHSC \(2013\), Guidance on Regulation 2016/127](#)

<sup>337</sup>

resources. For this to be workable for both manufacturers and competent authorities, clear regulations and guidance would be necessary.

- 8.62 An additional benefit of this measure is that competent authorities would be well placed to issue updated guidance when required. Guidance could be issued where clarification on the interpretation of the regulations is needed – for example, on the definition of online advertising for the purposes of Regulation 2016/127– or where compliance concerns have arisen on multiple occasions and additional guidance to industry and regulators would therefore be helpful.
- 8.63 Compliance with the existing rules and, if necessary, enforcement of them would benefit parents, by softening a little the impact of brand awareness and reputation on their choice of infant formula brand and create a more level playing field for businesses.

### **Strengthening labelling and advertising rules**

- 8.64 As noted in Section 5 Consumer behaviour, we consider that brand awareness and reputation play an outsized role in parents' decision-making. This can mean that parents' decisions are typically not always based on objective information, and as such, they may pay more than they otherwise would.
- 8.65 We consider that a range of measures, set out in more detail below, could be implemented to reduce manufacturers' ability to raise their brand awareness and reputation using labelling and advertising, which go beyond the existing regulations. Some of the measures discussed below may be more straightforward than others to implement, and bring into play trade-offs for consideration.
- 8.66 It is our provisional view that these measures would support parents to place greater weight on clear, accurate and impartial information when deciding which brand of infant formula to use by reducing the incentive and/or ability of manufacturers to engage in brand-building behaviour. These measures could encourage them to consider buying cheaper brands, have confidence to purchase cheaper formula options, and ultimately increase downwards pressure on prices.
- 8.67 Our current thinking is that these measures are not inconsistent with the policy objective of not discouraging breastfeeding.

### **Labelling rules**

#### *Entirely different infant formula labelling*

- 8.68 This measure would set a higher bar for the degree of differentiation required between infant formula and follow-on formula branding and labelling by requiring them to be 'entirely different' and not merely 'distinct', as is currently the case.

- 8.69 Most importantly, it would require manufacturers to have **entirely different brand names and logos for infant formula**. Therefore, a brand with both an infant formula product and a follow-on formula product in its range would need a new brand name and logo so that they can be entirely different from each other. By contrast, current DHSC guidance indicates that infant formula and follow-on formula labelling can carry the same brand name.<sup>338</sup>
- 8.70 Under this potential measure, brand names would need to use different fonts and logos would need to use different colours, styles, images and/or graphics. Further, where products are currently on the market it would be the infant formula product that would be required to move to new entirely different branding and labelling, rather than the follow-on formula.
- 8.71 Similar to existing DHSC guidance,<sup>339</sup> this measure would also require the text style and placement, images and/or graphics (including placement and style) and colours used on the labelling to all be entirely different between infant formula and the manufacturers' other products (including follow-on formula). Manufacturers would also not be allowed to use an image of animal X on both an infant formula and follow-on formula label, even if the animal is in different positions on the different products. Sufficiently detailed guidance would need to be provided to businesses to ensure that the requirements placed on them were clear and they could ensure that their labelling was 'entirely different'.
- 8.72 The measure is likely to be more effective than simply requiring 'clearly distinct' labelling, as the current DHSC guidance indicates is currently the case. However, its effectiveness is ultimately dependent on whether parents independently, or via other sources of information, make a connection between a manufacturer's new and previous infant formula branding. This may be challenging given the importance of recommendations and word of mouth in brand choice and the longstanding, well-known nature of the many brands in the market. New ways to cross-promote infant formula may also arise.
- 8.73 Further, as this measure seeks to reduce brand influence, to maximise its effectiveness, objective and readily understandable information needs to be made available to parents, as discussed above.

#### *Standardised infant formula labelling*

- 8.74 An additional measure which goes even further is to require all infant formula products to be packaged with **standardised labelling with the same colour schemes and designs, but allowing the official company name and logo and**

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<sup>338</sup> DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 08/08/24.

<sup>339</sup> DHSC (updated April 2024), [Guidance on Commission Delegated Regulation \(EU\) 2016/127](#), accessed 08/08/24.

**essential written information (for example, about the composition and quantity).**

- 8.75 This measure would require all infant formula to broadly have the same appearance in all settings with the aim of significantly reducing the role of labelling in parents' decision-making and, in turn, increasing parents' price sensitivity.

*Restrictions on product messaging*

- 8.76 We observe in Section 4 Market outcomes: Product differentiation that manufacturers compete by differentiating their brands and products. Some of these differences are more easily interpreted and assessed by parents than others. For example, there is a well-established process for verifying organic provenance. Manufacturers may signal trustworthiness/superiority in more subtle ways, including via intangible and/or non-verifiable benefits rather than specific and verifiable points of difference about particular products, such as by using phrases referring to their years of experience, 'inspired by research' and 'advanced'.<sup>340</sup> Many of these phrases are difficult, or even impossible, for parents to meaningfully interpret, assess – including in terms of how much value to place on them - and verify.
- 8.77 In many markets, we would view messages signalling brand or product differentiation as a sign of competition working well to deliver good outcomes for parents; for example, by incentivising investments in research and development. However, with regard to the supply of infant formula specifically, and given the specific features of the market, we are concerned that some of these messages can result in parents paying more than they need to because:
- (a) They may indicate intangible benefits which are difficult, or sometimes impossible, for parents to meaningfully assess - including in terms of how much value to place on them - and verify. They may not add any tangible value.
  - (b) They can be persuasive. Our consumer research found that such product claims can be impactful, particularly amongst parents who feel guilty for using formula.
  - (c) 'Signalling' trustworthiness and superiority could help manufacturers to build their brand reputation in general and to justify charging a premium on their products/ranges.

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<sup>340</sup> For example, Danone's Aptamil brand contains the message 'Inspired by 50 years of research in early life science'. Nestle's SMA brand states that it has been 'leading baby nutrition for over 100 years'. Kendal's Kendamil Classic states that it has 'over 60 years' expertise in infant nutrition'.

(d) They are often made on labels and advertising for other products, such as follow-on formula, and so contribute to brand building and cross-promotion.

8.78 Governments could intervene in the market by **setting stricter thresholds for such certain types of claims, or to prohibit the use of phrases/claims which are difficult for parents to meaningfully assess.**

8.79 The primary aim of this measure would be to help parents make more meaningful objective comparisons between brands and specific infant formula products by enabling clear, accurate and impartial information to feature more prominently in parents' thinking. As a secondary consequence, parents may become more price sensitive.

#### *Potential trade-offs*

8.80 While these measures would significantly reduce or eliminate consumer exposure to branding and cross promotion, it is our provisional view that they may require trade-offs to be made. In particular, they make it more difficult for firms wishing to enter and/or expand in the market to build brand awareness and attract customers, which could over time lead to a reduction in choice for parents. In this market, such a reduction in choice may not be a concern if manufacturers' investments in quality and innovation are significantly oriented towards 'signalling' trustworthiness and superiority via intangible and/or non-verifiable benefits, rather than specific and verifiable points of difference about particular products.

8.81 We also consider that there is a risk that these measures affecting labelling could also stigmatise parents who use infant formula.

### **Advertising rules**

#### *Prohibition on advertising*

8.82 As noted in Section 5 Consumer behaviour, we have found that many parents choose one infant formula product over another because of the value they place on the brand and its reputation, rather than because of their knowledge and understanding of the contents of the product.

8.83 In addition, as noted in Section 6 Impact of the regulatory framework and regime: Branding, labelling and cross-marketing, we observe that some manufacturers have been making significant investments in advertising follow-on formula and growing-up milk (for example, in some cases equating to [10-20%] or [20-30%] of their follow-on formula and growing-up milk revenues in the UK).

8.84 It is our provisional view that these investments by manufacturers in marketing result in brand awareness having an outsized influence on parents' purchasing

decisions which, in-turn, means that some parents are paying more than they otherwise would.

- 8.85 It is our provisional view that **extending the prohibition on advertising of infant formula to follow-on formula, or going even further, prohibiting all brand-related advertising**, would reduce the influence of branding on parents' decision-making and, in turn, potentially increase downwards pressure on prices.
- 8.86 We note that there is no requirement for babies to be given follow-on formula. The NHS website states that, 'research shows that there are no benefits for babies from switching to follow-on formula at six months. In addition, when babies are one year old, they can start to drink whole cow's milk or sheep's or goat's milk, as long as they are pasteurised.'<sup>341</sup>
- 8.87 In terms of trade-offs, we consider that restricting manufacturers' ability to engage in brand building activities is likely to inhibit their ability to differentiate their products. It is our provisional view that the impacts of this on manufacturers' ability to compete are uncertain. On one hand, we consider it might increase barriers to entry and expansion by making it harder for manufacturers to differentiate their products on parameters other than price. This could reduce the ability of existing manufacturers and potential new entrants to compete, including retailers who might otherwise be able to enter and/or expand with own-label products at lower price points. It could also reduce manufacturers' incentives to innovate. But on the other, it could help to create a more level playing field by reducing (or perhaps eliminating altogether) the importance of making investments in marketing as a way of attracting customers.

### **Price controls and public provision**

- 8.88 The measures set out above aim to help parents make well-informed decisions by rebalancing the information environment (eg, with the aim of making them less likely to equate price with quality), and improve price competition, to bring downwards pressure on prices. However, parents' deeply-entrenched behaviours in this market, understandably driven by wanting to do what is 'best' for their baby, may mean that those measures have limited impact in bringing down prices or giving parents confidence to purchase cheaper options, at least in the short to medium term. More interventionist measures may therefore be needed to bring prices down in the market more directly, and with more certainty. However, while such an approach might mitigate some of the acute issues for some parents that high formula prices can cause, we consider that they would involve accepting considerable trade-offs.

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<sup>341</sup> NHS England, Types of formula, [Types of formula - NHS](#), accessed 17/10/24.

- 8.89 Below, we set out some of the more significant interventions that governments could, in principle, make with the aim of bringing down prices directly.
- 8.90 Based on the evidence the CMA has assessed to date, these measures would be unlikely to form part of our final recommendations, but are included for completeness at this stage. As part of our engagement with governments in the coming months, we will explore whether there is any interest in considering any such measures as backstop options, and if so, we will explore their impacts and potential risks, and reflect this in our final report.

### **Price controls**

- 8.91 **The retail price of infant formula could be capped** by regulations which set a maximum price or a profit margin cap.
- 8.92 In response to rising prices, some organisations have called for price ceilings to be implemented.<sup>342, 343, 344</sup> If governments wish to bring down prices directly, with more certainty, and potentially in a shorter timeframe than waiting for competition to play out, they could consider a more interventionist approach in the form of a price ceiling.
- 8.93 A maximum price control would directly address the price of infant formula in the market by requiring that the price retailers charge parents does not exceed a specified ceiling.
- 8.94 The number of products which would be affected by this measure would depend on the level that the price ceiling is set at. For example, it could be set at a high level with the aim of bringing down the price of the most expensive products in a short timeframe. Alternatively, it could be set around the level of the ‘standard’ or ‘value’ infant formula so that the price of most products available in the market is reduced.
- 8.95 Another measure which is similar to a price ceiling is a **profit margin cap**. It would require that manufacturers and/or retailers do not set their prices above a specified percentage above their costs. This would not be unprecedented. In 2024, the Greek government imposed a 7% profit margin cap on infant formula with the aim of making it more affordable for parents.
- 8.96 We consider that one outcome from interventions in the market which have a strong focus on bringing down prices is that manufacturers will have less ability and/or incentive to differentiate their products. For example, firms may have less

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<sup>342</sup> See eg [Unaffordable infant formula price rises: Safeguarding infant health and safety - Baby Friendly Initiative \(unicef.org.uk\)](https://www.unicef.org.uk), accessed 17/10/24.

<sup>343</sup> Baby Feeding Law Group UK’s response to invitation to comment.

<sup>344</sup> First Steps Nutrition Trust’s response to the CMA’s invitation to comment.



incentive to compete by innovating, investing and offering genuine benefits which parents value if there is a fixed price ceiling. This could result in less choice for parents and greater risk of product shortages if some manufacturers scale back or exit the market. Governments will wish to assess, in light of the nutritional sufficiency of all infant formula products, and our ultimate conclusions on whether manufacturers' investments are oriented towards 'signalling' higher quality – whether the potential outcomes and risks are acceptable.

- 8.97 In addition, the imposition of a price ceiling or profit margin cap could result in prices converging (ie with some prices increasing). There are two main reasons for this:
- (a) Parents perceiving the capped price to be standard and reducing their sensitivity to price variations below the cap.
  - (b) Reduced incentive for suppliers to compete by undercutting each other on price.
- 8.98 We think that prices are most likely to converge where retailers are not permitted to publicise their price reductions and other discounts. Permitting retailers to publicise prices and price reductions could mitigate against this.
- 8.99 We consider that the level that a price ceiling is set at would require taking into account the broad range of infant formula products currently available in the market, and which may be introduced in the future.<sup>345</sup>
- 8.100 In addition, we think that the design of a profit margin cap would require to take into account different ways that manufacturers and retailers record their financial transactions, which is likely to be challenging (particularly with international corporate groups active in the supply of multiple product categories and the use of internal transfer pricing).

### **Public provision**

- 8.101 As noted in Section 7 Competition in the Market, our provisional view is that barriers to entry and/or expansion in the supply of infant formula are high, and this is partly driven by the importance of brand awareness and reputation.
- 8.102 A potential intervention is for government(s), (either collectively or individually) to procure infant formula from a third-party contract manufacturer at a competitive price point.

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<sup>345</sup> Even if a price cap was imposed on all products currently in the market, manufacturers may be able to circumvent it by making small changes to their product offerings.

- 8.103 We consider that the government(s) may be able to use an established brand name for its infant formula, such as 'NHS', or invest in establishing a new brand for infant formula.
- 8.104 This intervention aims to introduce greater choice for parents and a lower price point. In-turn, it may also put downward pressure on other manufacturers' prices.
- 8.105 It is our provisional view is that this type of intervention carries significant uncertainty over its effectiveness.
- 8.106 If parents continue to see price as a proxy for quality, they may not choose the public provision of infant formula if it is offered at a lower price. We also consider that there is uncertainty over how parents will respond to a product with, say, 'NHS' branding compared with alternatives from well-known infant formula brands. There may be a stigma associated with such a product.
- 8.107 Therefore, for this remedy to be effective, we consider that many of our concerns over what is driving the outcomes we have found in the market would need to have already been addressed. In essence, this means that for this potential measure to be effective, a precondition is likely to be the successful implementation of the information remedies designed to change the behaviour of parents in this market as set out above.
- 8.108 In addition, we observe that there is uncertainty over the price which the governments would be able to offer retail customers, particularly because:
- (a) This measure would potentially require high upfront investment costs from the public purse in setting up the supply chain, managing distribution, and building awareness.
  - (b) In the event of a lack of demand, there is a risk that the supply of publicly procured infant formula may have insufficient scale to be economically viable without financial assistance.
- 8.109 Therefore, even if the governments make significant investments to enter the market, there is a risk that their supply of infant formula is not profitable and the aims of this measure are not achieved.

#### *United States approach*

- 8.110 While there are significant differences between the infant formula markets in the United Kingdom and United States, we note that just over half of the infant formula in the United States is distributed through a public benefits program administered by the U.S. Department of Agriculture and U.S. state and tribal governments. It involves individual states contracting with manufacturers based on open public

procurement processes.<sup>346</sup> It aims to safeguard the health of low-income women, infants, and children up to age five who are at nutrition risk, so it is not an option for all parents.<sup>347</sup> We understand that between 2003 and 2013, typically only three manufacturers participated in the procurement process.<sup>348</sup> Therefore, while states may benefit from being able to negotiate better prices and other favourable terms as a result of having buyer power, the market is very concentrated.

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<sup>346</sup> Special Supplemental Nutrition Program for Women, Infants, and Children.

<sup>347</sup> US Department of Agriculture: [Special Supplemental Nutrition Program for Women, Infants, and Children \(WIC\)](https://www.fns.usda.gov/wic).  
<https://www.fns.usda.gov/wic>, accessed 17/10/24.

<sup>348</sup> Special Supplemental Nutrition Program for Women, Infants, and Children.

## 9. Responding to the interim report and next steps

- 9.1 We invite comments on our provisional analysis and findings and potential remedies to address our emerging concerns as set out in this interim report by **29 November 2024**.
- 9.2 We welcome views from stakeholders of all kinds, especially views which are supported by evidence. In addition to general submissions, we welcome responses to the questions in the box below.

### Questions

#### The market

1. What is the value derived from follow-on formula for a) parents and babies and b) manufacturers and retailers given that the NHS states that 'research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to have first infant formula as their main drink until they are 1 year old.' CMA analysis has found that follow-on formula is generally priced the same as (or sometimes slightly cheaper than) infant formula.

#### Our provisional analysis and findings

2. Do you agree with our provisional analysis of market outcomes, as set out in section 4 of this interim report? Please explain why you do or do not agree, providing evidence to support your response where possible.
3. Do you agree with our provisional conclusions on the potential drivers of these market outcomes as set out in sections 5, 6, and 7 of this interim report? Please explain why you do or do not agree with regards to the following in particular:
  - a. consumer behaviour (section 5)
  - b. the regulatory framework (section 6)
  - c. competition in the market (section 7)
    - i. competition between manufacturers/brands
    - ii. competition between retailers
    - iii. barriers to entry and expansion
4. Are there any other factors which we have not addressed in the report which you consider could be contributing to the outcomes we observe?

#### Our provisional views on possible remedies

6. Please provide your views on whether the possible remedies we have set out in section 8 would be effective and proportionate in addressing the issues we have identified (on their own or in combination). We also invite views on the specific questions below, noting that stakeholders can refer to the same remedy in response to Question 7 and 8 if they consider the remedy could have both positive and negative impacts.
7. Which of the possible remedies (on their own or in combination) set out in section 8 are likely to have the biggest impact on improving outcomes for parents who need or choose to use infant formula? Please explain why, including which of the following outcomes you think would be affected:
  - a. price
  - b. product differentiation and/or
  - c. choice
  - d. other (please specify)
8. Are any of the possible remedies set out in section 8 likely to have an adverse effect on the following outcomes for parents in this market? If so, please explain why.
  - a. price
  - b. product differentiation and/or
  - c. choice
  - d. other (please specify)
9. Do you consider that revising the regulations to ensure that manufacturers and retailers are permitted to publicise (i) prices and (ii) price reductions (section 8) is likely to induce the use of infant formula? If yes, please explain to what extent you consider this is likely to occur and any possible mitigations.
10. Are any of the possible remedies set out in section 8, likely to have an adverse effect on outcomes or unintended consequences for businesses or any other stakeholders in this market? If so, please explain what these outcomes are and why they may arise.
11. Are there any other possible remedy options which are not outlined in section 8 which we should consider? If so, please outline how the option would work and its likely impact on market outcomes (such as price, product differentiation and/or choice).

## Responding to the interim report

- 9.3 Please email written submissions to [InfantFormula@cma.gov.uk](mailto:InfantFormula@cma.gov.uk) by **5pm 29 November 2024**.

- 9.4 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.
- 9.5 We propose to publish responses to this consultation 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.**
- 9.6 **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.**
- 9.7 An explanation of how we will use the information provided to us can be found in Annex A below. This Annex 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.

## **Next steps**

- 9.8 The CMA will consider the submissions we receive, before preparing a final market study report, and will continue engaging with governments. It will be important for the CMA to understand any action governments plan to take following the publication of our final report, and the anticipated timing for this. In light of governments' responses, including regarding any potential changes to the legislative landscape, the CMA may further consider whether and what action by the CMA would be appropriate to address the concerns identified. This could include the option of making a market investigation reference at a later date although the CMA does not currently consider this to be the best way to address its emerging concerns.

## **Annex A: Use of information**

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/or 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:
  - any information relating to the private affairs of an individual which might significantly harm the individual's interests; or
  - 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 \(CMA6\)](#)