



BRC's comments to CMA on interim infant formula report

29 November

1. Thank you for giving us the opportunity to comment on the interim report on the market study on infant formula and follow on formula. We are providing these comments on behalf of our members.
2. The BRC's purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future. Retail is an exciting, dynamic and diverse industry which is going through a period of profound change. Technology is changing how people shop, costs are increasing and growth in consumer spending is slow.
3. The BRC is committed to ensuring that the industry thrives through this period of transformation. We tell the story of retail, work with our members to drive positive change and use our expertise and influence to create an economic and policy environment that enables retail businesses to thrive and consumers to benefit. Our membership comprises over 5,000 businesses, accounts for £180 bn of grocery sales and employs over 1.5 million people in food outlets and distribution.
4. The report addresses an area of concern for our members. Retailers have tried to do the right thing, apply the legislation consistently, respond to consumer needs and NGOs' requests, however the lack of Government support and inconsistent views and requests, has made this very difficult. Therefore we welcome the CMA looking into the market of these products.
5. The report focuses exclusively on operational activities in the UK market. We understand that this is the remit of the CMA, however, our market practices are influenced by many factors which are not considered in the report. For example, under the Windsor Framework agreement, Northern Ireland must apply European legislation. If the recommendation to allow price promotions on infant formula was to be taken forward and the GB government were to amend the legislation to permit it, it will leave retailers in the difficult situation of potentially managing pricing for these foods different in NI to the rest of the country and leaving Northern Irish consumers in an unfavourable position. The report should look at the consequences of all of their recommendations.
6. The report makes no reference to the World Health Organisation (WHO) and UNICEF recommendations and guidance for these products. These are regularly referenced as reasons why certain actions cannot be taken. It is imperative that the Government understands which of those recommendations are relevant in the UK.

7. For example, one of the UNICEF recommendations is that parents do not switch between infant formulas. It is unclear whether this recommendation is more relevant to countries in which the composition of infant formula is not as heavily regulated as it is in UK/EU, or whether the additional ingredients added to these products are difficult to adjust to by small babies. If this recommendation was relevant to the UK, the recommendation to allow the price promotion of formula will need to be carefully considered to understand whether one of the likely consequences is parents shopping for the cheaper product each time and switching brands as a result. The recommendation to include self-edge ticketing advice or a labelling statement to clarify that all formulas meet babies' nutritional needs, should also be reviewed in this context. None of this is a concern if the UNICEF recommendation is not relevant in the UK market. If that is the case, the Government must make a statement to this effect, so there is a consistent understanding.
8. The report states that over the next few months CMA will be having conversations with the wider Government to understand whether any of the suggested recommendations could have detrimental effect on rates of breast feeding. Having been involved in the review of the European legislation which sets the basis for the legislation in the UK, it is our understanding that evidence of a correlation between advertising and promotion of these products leading to increased purchasing was used to inform the restriction. Understanding that correlation or lack of, is fundamental and should be the government's priority.
9. We have structured the rest of our response to follow the relevant recommendations made in the report.
10. **Information in retail settings** – consistency of messaging is key to avoid confusing consumers. We also want to avoid retailers being criticised for their choice of words. It is imperative that any wording to be used is coordinated by Government, like DHSC, and is coordinated across the UK 4 nations. BRC has made this request to Government several times but there has been no outcome.
11. The advice should be clear and simple. It should also be concise to help retailers logistically place it in the right settings. Brevity is also important if this advice/message is to be included on product labels. It is important both messages, in retail settings and on label, are consistent and as close as possible, if not the same.

12. One of the settings which will need to be considered is online. Retailers will have to establish whether the statements are better placed in the image carousels, in which case engagement with data system companies like Brandbank will be necessary, or on specific product pages.
13. **Statements on pack** – we are supportive of this recommendation. Such statement will give more credibility to lower price point products on the market, which the consumer could wrongly assume are not as complete as other competitors. As stated above, brevity of messaging is key on labels due to the limited space. This is something we believe that the CMA should engage manufactures about. In a similar way, we consider that manufacturers are also best placed to guarantee that the branding and labelling of products within their own ranges, comply with all regulations.
14. **Standards on shelf positioning** – Our members have received no complaints or feedback from customers about finding it difficult to find infant formula instore or confusingly picking follow on formula when their were shopping for infant formula. Some NGOs challenged the positioning of infant formula in relation to follow on formula several years ago. When a number of enforcement authorities looked into it, they concluded the law was being adhered to and products were clearly placed.
15. Requiring infant formula to be displayed more prominently could lead to increase purchase. As stated in our introductory paragraphs, before these recommendations are finalised, the government should firmly establish if this will have a negative impact on rates of breastfeeding in the country.
16. **Publicised price promotions** – The report states that it is not clear whether the legislative restriction on promotions extends to publishing a product price reduction. It has always been the European Commission legal services advice that publishing price restrictions is covered by the promotions restrictions and that is how Members States should implement the Regulations. While we are no longer in the EU, these provisions pre-date Brexit. Furthermore, the Commission interpretation stands in Northern Ireland. If this recommendation was to be taken forward, the law will need to be amended.

17. The manner in which this recommendation is worded, can be read as the Government is encouraging retailers to actively promote price reductions on these products. It would, of course, be anti-competitive for our members to agree to reduce the price of infant formula and highlight this. If the law was to be changed or clarification was to be given that this practice is not covered by the promotion restrictions, each retailer will have to make their own decision, including whether their systems enable them to take a different approach on Northern Ireland.
18. When the interim report was published, the Ministerial statement suggested that our members were over interpreting the legal provisions by not covering these products under their loyalty schemes. Our members' legal councils are clear that the use of loyalty scheme are a form of promotion. This is consistent with the interpretation of other provisions like The Food (Promotion and Placement) Regulations 2021 applicable to HFSS foods, which make it clear that loyalty cards and schemes are in scope.
19. It is important that we all understand the provisions consistently. There is a recommendation further in the text suggesting further clarity is required on what constitutes advertising, however we feel that clarity in the area of promotions is more urgent. It is very important that this is included as one of the recommendations, with the aim to get consistent advice in all 4 UK nations.
20. **Approval is required before infant formula products are placed on the market** – This feels like a backwards step since the requirement to register and get approval for products used to exist in the UK, but was removed to reduce cost and burden to businesses. We question the value of such approval, which will only be able to cover product composition and presentation, both of which have not been identified as issues in the UK. There is a risk the cost of such approval will be passed onto customers.
21. **Entirely different infant formula labelling** – Our members have not received complaints about customers not being able to differentiate between infant formula and follow on formula, or customers having chosen the wrong product. But, we would be open to a discussion on how to make the two products more significantly different.
22. We however, strongly believe there is not enough information and clarity for parents on the difference between infant formula and follow on formula and that should be the focus. Often health advisors do not understand the difference and the Government websites are not clear enough.

23. **Extending the prohibition on advertising to follow on formula** – This recommendation seems contradictory to others in the document. On one hand CMA is recommending one form of marketing is increased by encouraging publishing price reductions, when another marketing tools is removed all together for follow on formula, by banning advertising of these products.
24. As stated above, we believe the priority for follow on formula should be to enable parents to clearly understand the difference between it and infant formula and to get the correct clear advice to avoid it being introduced to the baby's diet ahead of time.
25. There are a number of elements which as not addressed in the report.
26. **Food banks / food surplus organisations** – We appreciate the report focuses on the market of infant formula, however sustainability and food waste is a very important area for businesses. Infant formula is being wasted due to the varied approaches from food banks and food surplus organisation, many of which are refusing donations of infant formula based on NGO pressure and possible over interpretation of international advice. As stated in our introductory remarks, it is very important that international guidance is assessed and the UK government establishes and publicly explains what are the elements relevant versus those which should not apply in the UK.
27. **Clarity on promotions** – The report recommends further clarity is required on what is covered by advertising. It is fundamental that further legal clarity is provided on promotions and what is covered by that restriction and what is not. It is also important that any advice is made public in the form of public advice of guidance. That way we will avoid the current situation where contradictory advice is given every time the officials responsible for a policy change.
28. **Follow on vs. Infant formula** - Stronger, clearer and consistent advice to parent is needed on the different between infant formula and follow on formula.
29. If there are any questions on any of our comments, please do not hesitate to contact us at: [REDACTED]