

INFANT FORMULA AND FOLLOW-ON FORMULA CMA MARKET STUDY
Nutricia Limited (trading as Danone UK)
Response to the CMA’s Interim Report

I. Introduction and Executive Summary.	3
II. The Interim Report’s provisional findings are undermined by significant flaws in the CMA’s analysis.	6
<i>(a) The CMA has failed to engage sufficiently with market participants throughout the course of the Market Study, resulting in provisional findings that suffer from material errors of fact and assessment</i>	6
<i>(b) The CMA lacks sufficient evidence (or has used evidence highly selectively) to support some of its key findings</i>	7
<i>(c) The CMA has overlooked evidence of recent key market developments, especially entry and expansion in the form of private label and branded ‘value’ products</i>	7
<i>(d) The Interim Report places undue weight on the inherently limited consumer survey commissioned by the CMA</i>	8
III. The Interim Report fails to properly recognise the competitiveness of the IF market.	9
<i>(a) Introduction</i>	9
<i>(b) Manufacturers continue to deliver tangible value to consumers through investment in innovation and safety; and brand plays a key role in substantiating and delivering these outcomes</i>	9
<i>(c) The market is highly contestable – recent entry in the market has been successful and there is a real prospect of further entry</i>	13
<i>(d) Competition is working as it should – driving price-related responses, manufacturer innovation and increasing choice for consumers</i>	17
IV. The subset of legitimate concerns in the Interim Report can and should be addressed by enhancing the “Information Environment”	25
<i>(a) Danone UK is supportive of most of the CMA’s proposed recommendations</i>	25
<i>(b) Other measures could help the CMA achieve its overarching objective for consumers to “get good value for money” when purchasing IF products</i>	28
<i>(c) Certain possible measures in the Interim Report would undermine the aim of ensuring that parents have access to clear, accurate and impartial information, as well as having other adverse, unintended consequences</i>	28
<i>(d) The CMA must ensure that the recommendations do not have the unintended effect of disincentivising innovation and product quality standards</i>	34
<i>(e) Price controls and public provision are unnecessary and excessive responses that would have a negative effect on competition and consumers.</i>	34



Appendix I - Analysis of the CMA's Consumer Research Survey	36
Appendix II - Danone UK's pricing analysis demonstrates that Danone UK is not a price leader	39
Appendix III – Danone UK does not agree with the CMA's gross margin calculations	42



I. Introduction and Executive Summary.

1. Danone UK welcomes the opportunity to respond to the CMA's Interim Report on its infant formula (**IF**) and follow-on formula (**FOF**) market study (the **Market Study**).
2. Danone UK is committed to giving babies the very best nutritional start in life. Danone UK recognises the importance of breastfeeding for infant and maternal health. For parents who cannot or choose not to breastfeed, Danone UK works tirelessly to provide high-quality baby formula to meet a range of needs.
3. Danone UK strongly supports one of the main themes emerging from the CMA's work: that **it is key to ensure that parents and caregivers are provided with the information they need to make well-informed choices**. To this end, Danone UK also supports the CMA's proposed recommendations that have the potential to genuinely improve the quality of information being provided to parents and caregivers.
4. Notwithstanding its support for these changes, Danone UK considers that the CMA has, at a more fundamental level, **failed to properly recognise the already highly competitive nature of the IF market today**.
5. In particular, there is a disconnect between some of the CMA's provisional findings (which are often too heavily based on theoretical assumptions or unsubstantiated third-party claims) and the available evidence in relation to **how the market actually operates in practice**.
6. In this regard, contrary to what the CMA's Interim Report may suggest, Danone UK notes that:
 - a. The nature of IF, as a consumer healthcare product, means that pricing is not the "be all and end all" for consumers. Rather, consumers' needs are driven, to a significant extent, by the **trust** derived from high **product safety** standards, and the **positive health outcomes** linked to **product composition and innovation**. With an ever-increasing range of products available to UK consumers, and a continued stream of nutritional improvements being made to products, it is apparent that manufacturers have responded to this demand as **innovation in IF has delivered, and can continue to deliver, tangible incremental benefits for babies, parents and caregivers**. Within this context, **brand equity plays a genuine and vital role** in substantiating product quality and safety for consumers, thereby validating their confidence in the product which they are purchasing.
 - b. Overall, **competition in the market is robust and dynamic: consumers are responsive to new entry and price changes; manufacturers react to competition from rivals** (sacrificing margin by reducing pricing or introducing more cost-effective product formats for consumers); and **retailers continually leverage their buying power** (as essential routes to market) to constrain manufacturers.
 - c. In particular, the market is **highly contestable**. There have been **multiple recent examples of successful entry and expansion in the IF market**. New entrant brands, such as Kendamil and Mamia, have been able to rapidly grow and capture a significant share of the IF market. Kendamil, a recent entrant, has successfully achieved a 20-30% market share in a relatively short period. The market continues to show very recent evidence of further product differentiation by existing players (*e.g.*, Kendal's Bonya product) and additional own-brand entry (*e.g.*, Lidl's Lupilu product). There is no reason why such examples could not be further replicated in the future, in particular because the evidence of actual market practice shows that the CMA's pessimism around the (hypothetical) barriers to entry is not correct.



7. Accordingly, the UK IF market shows a **range of indicators that the CMA would typically regard as evidence that a market is working well** (based on its published guidance and approach in previous cases).
8. That said, **Danone UK strongly agrees with the CMA’s position**, as set out in its guidance in relation to market studies, that: *“Competition is enhanced when consumers are empowered to shop around through access to readily available and accurate information about products and services”*.¹
9. Specifically, Danone UK considers that **parents and caregivers need extensive, unbiased information to make informed decisions about what is best for them and their babies**. Danone has a long-standing global policy of only sharing nutritional or health information with parents that is factual and science-based. Danone UK is confident that the tangible benefits of its products can be justified on an objective and factual basis, and is keen to compete on a level playing field and on the merits of its products.
10. For these reasons, Danone UK **supports the majority of the CMA’s proposed recommendations**, which it considers have the potential to further enhance the quality of information being provided to parents and caregivers. Danone UK looks forward to working with the CMA and government on the design and implementation of these recommendations.
11. In particular, Danone UK supports the CMA’s proposals for **healthcare providers (HCPs) to supply clear, accurate and impartial information to parents at key decision points in healthcare settings**. Danone UK believes that HCPs are an important and trusted source of expert advice for parents and should be able to help improve the quality of information being shared between parents and manufacturers.
12. Danone UK also agrees with the CMA that **HCPs should be given more support to fulfil this role**. In particular, in order to be a trusted source of expert advice, it will be essential for HCPs to have access to better educational support on infant nutrition (including information on breastmilk composition) and better access to information on different formulas.
13. To support the CMA’s intended objectives, these measures should be designed in a way that ensures high standards of information provision. **Manufacturers** must commit to provide information that is **up-to-date, accurate, scientifically proven, and easily accessible** to HCPs (avoiding concerns over misleading or inaccurate information being spread). **HCPs** must commit to follow a **strictly factual evidence-based** approach. In keeping with best practice in other consumer healthcare settings, Danone UK believes that a **binding code of practice** (reviewed and approved by the NHS) should be issued to regulate interactions between manufacturers and HCPs.
14. In **retail settings**, while Danone UK would not advertise its IF products (in keeping with its long-standing global policy to protect and promote breastfeeding), Danone UK supports the ability of retailers to communicate their prices (and price reductions), so that parents can make more informed decisions on where to buy their preferred products. Retailers are a **critical route to market** for manufacturers of IF, and have the potential to play a **key consumer-facing role** in supporting the CMA’s recommendations.
15. Danone UK also supports the CMA’s recommendation to **clarify, strengthen, and enforce the existing regulations** governing the IF market in order to improve provision of information to parents and caregivers.
16. The clarification of **what constitutes advertising**, for the purposes of Regulation 2016/127 is critical in ensuring a **level playing field** for all manufacturers to compete on the verified merits of their products. Danone UK would also welcome

¹ Market studies, Guidance on the OFT approach, para. 2.5.



the **stricter, quicker, and more consistent enforcement of these regulations** (so that all market participants can be confident that breaches of the regulations will both cease and be properly sanctioned).

17. Danone UK also agrees with the CMA's recommendation to **strengthen the competent authority role** – including by requiring compliance by all market players with existing rules (such as stage differentiation) before IF products are placed on the market.
18. More broadly, Danone has a global policy of only making **health or nutritional claims** on the labels of its IF products **where permitted** under local law, and **backed by scientific evidence**. This practice forms part of Danone's commitment to providing parents with **accurate and trustworthy information**, enabling them to make the best feeding choices for their babies. This means that Danone UK agrees with the CMA's recommendation that **stricter thresholds for claims should be set**, and that **only scientifically-backed/verified nutritional explanations (verified by an expert third-party) should be permitted in relation to IF products**.
19. Overall, Danone UK believes that these measures could **further improve outcomes for consumers in the IF market** and enhance the already robust and dynamic competition – on price, quality, and innovation – observed in the market today.
20. The remainder of this submission is structured as follows:
 - a. **First**, Danone UK **highlights the procedural and evidential deficiencies that undermine certain aspects of the provisional analysis** set out in the Interim Report (including the CMA's failure to meaningfully engage with all market participants, its failure to properly consider key recent market developments, and the lack of a proper evidential basis for many of the Interim Report's key findings). These flaws must be addressed before the CMA issues its final report on its Market Study (or the CMA must more clearly reflect the limitations in its evidence base in its findings and how the underlying analysis is presented). (See [Section II](#).)
 - b. **Second**, Danone UK **explains how the Interim Report fails to properly recognise the competitiveness of the IF market**. The response sets out a range of evidence showing that competition between manufacturers is robust and dynamic (across multiple fronts), and describes why it is critical to take proper account of the role that product safety, quality, trust, and innovation play in consumers' decision-making and users' health outcomes. Danone UK also sets out the evidence showing that the market is highly contestable, with a significant amount of successful recent entry in the market, and the real prospect of further entry and expansion in the future. (See [Section III](#).)
 - c. **Third**, Danone UK sets out its support for the CMA's recommendations that seek to ensure that **parents have access to clear, accurate, and impartial information**, explaining why these measures are, in practice, capable of addressing effectively all of the CMA's concerns. Danone UK also explains why certain other recommendations are not necessary to enhance the functioning of the IF market and in some instances would, in fact, undermine this objective (*i.e.*, because they would limit or distort the information made available to parents), while also risking inadvertent adverse consequences (such as having a chilling effect on innovation). (See [Section IV](#).)



II. The Interim Report's provisional findings are undermined by significant flaws in the CMA's analysis.

21. The findings of the CMA's market study should have a proper evidential basis. When carrying out a market study, the CMA must take reasonable steps to acquaint itself with the relevant information.² This is critical to ensure that the CMA's outcomes are rigorous, accurate and not only comply with the CMA's public law duties (including by ensuring that appropriate steps are taken to protect the position of affected parties, and that inappropriate assertions or bias are avoided). More broadly, it is also important for the CMA's final report on the Market Study to be able to command the confidence of rule-makers, manufacturers, and parents and caregivers.
22. Unfortunately, this is not the case with several key portions of the Interim Report. A number of the headline provisional findings are not accurate or properly justified, and the underlying evidence basis involves selective or partial representations of underlying materials, whilst failing properly to address other contextual evidence or viewpoints. This means that the provisional findings (and the CMA's characterisation of the underlying evidence base) are not sufficiently reliable and robust, with the characterisation of the market often being fundamentally at odds with Danone UK's commercial experience as an IF manufacturer.
23. Further, the CMA makes several unsubstantiated observations that are not required to support the provisional recommendations made in the Interim Report and should therefore be excluded from the final report.
24. These flaws must be addressed before the CMA issues its final report on its Market Study (or the CMA must more clearly reflect the limitations in its evidence base in its findings and how the underlying analysis is presented).
25. The main limitations in the CMA's process to date and the Interim Report are summarised below.

(a) The CMA has failed to engage sufficiently with market participants throughout the course of the Market Study, resulting in provisional findings that suffer from material errors of fact and assessment

26. The CMA's guidance in relation to market studies states that it is committed to "*actively consulting, and taking into account the views of, interested parties*" including the businesses involved, in market studies.³ This guidance also notes that this will generally be done "*informally, rather than consulting formally on findings and recommendations*" and that this engagement provides the CMA with the "*opportunity to be clear about the issues [it is] considering, allowing for more focused submissions from stakeholders*".⁴
27. The CMA has, however, failed to follow its own guidance in this regard throughout the course of this Market Study. In particular, since the CMA's broadly framed invitation to comment (*ITC*) (published in February 2024), Danone UK was not provided with any meaningful indication of the specific issues upon which the CMA has been focusing, or offered any

² This position is recognised by the CMA in the recently published draft guidance explaining the substantive approach that the CMA will take under the markets regime. See, in particular, para. 2.58 and footnote 48 of the CMA's draft "Markets Substance Assessment Guidance" (5 November 2024), which cites to the case law governing the CMA's treatment of evidence, including: *BAA Limited v Competition Commission* [2012] CAT 3, paragraph 20(3); *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, at 1065B; *Barclays Bank plc v Competition Commission* [2009] CAT 27, at [24]. While Danone UK recognises that this guidance remains in draft (and is subject to consultation), it can nevertheless be taken to reflect the CMA's broader view on how competitive analyses should typically be conducted in market studies (and therefore it is notable that the CMA appears to have chosen to depart from what it holds out as its "best practice" approach in some aspects of the present case).

³ Market studies, Guidance on the OFT approach (as adopted by the CMA), para. 4.3.

⁴ *Ibid.*



opportunity to comment on the CMA's emerging findings prior to the publication of the Interim Report. A delay in publishing responses to the ITC has also meant that Danone UK has not been able to make the CMA aware of any inaccurate statements contained within those submissions. In practice, this means that the Interim Report contains a significant number of inaccuracies (and therefore cannot be relied upon in any material way). More broadly, this approach has led the CMA to make several important material errors of fact and assessment (e.g., because views submitted by third parties have not been properly tested or other evidence has not been assessed in its proper context).

(b) The CMA lacks sufficient evidence (or has used evidence highly selectively) to support some of its key findings

28. A CMA market study is intended to be evidence-led and any provisional findings (and final findings) should have a sufficient basis in evidence. However, in this case, the CMA has, in many places, failed to gather sufficiently probative information to support its provisional findings. Many aspects of the Interim Report are undermined by insufficient evidence (or no apparent evidential basis), or the highly selective use of evidence (i.e., placing undue reliance on some facts while ignoring other relevant considerations). The Interim Report's analyses of barriers to entry and retailer buyer power are two notable examples in which the CMA's provisional conclusions are not supported by the underlying evidence available to the CMA, as set out in more detail in Section III.
29. In addition, the Interim Report includes several unsubstantiated statements that are unconnected to the CMA's provisional recommendations. Not only did the CMA err in its assessment of those issues, but it was also unnecessary for the CMA to reach a (provisional) finding on them in the Interim Report. The Interim Report's analyses of price leadership, gross margins and Danone UK's bargaining power are three notable examples in which unsubstantiated and wholly unnecessary statements are contained within the Interim Report (see Section III).
30. Danone UK therefore urges the CMA to ensure that it has properly taken all evidence into account (and, in particular, properly considered the weight that it is appropriate to give to uncorroborated views) when preparing its final report on the Market Study. The CMA is also required to ensure that it fully substantiates all findings in the final report and does not include any findings that are unsubstantiated and/or unnecessary for the purposes of making the recommendations that are set out in that report.

(c) The CMA has overlooked evidence of recent key market developments, especially entry and expansion in the form of private label and branded 'value' products

31. The Interim Report does not appear to properly take into account certain key developments in the IF market, particularly in relation to private label offerings, even though these market developments were well-known before the publication of the Interim Report.
32. In particular, the Interim Report does not give sufficient weight to the role of Mamia in driving competitive responses and contains effectively no analysis of the competitive impact of the entry of Lidl's new private label offering, Lupilu, which was launched in August 2024.⁵ While Danone UK agrees with the position stated in the Interim Report that sales of this product to date would likely not affect the CMA's share of supply estimates, it nevertheless constitutes further proof of market entry, and the competitive impact of this product is already apparent in other ways (e.g., [REDACTED]).

⁵ Interim Report, footnote 46: "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."



[REDACTED]). The Interim Report also contains no reference to Kendal’s new “value” product range, Bonya, which was launched shortly before the report was issued.

(d) The Interim Report places undue weight on the inherently limited consumer survey commissioned by the CMA

33. The CMA cites the research commissioned from Thinks Insight and Strategy (the *Consumer Research*) in support of several statements on consumer behaviour. The research suffers from a number of limitations that restrict the way in which it should be used and how much weight should be put on it. The research is, however, continually cited in the Interim Report as if it captures the views of a large body of consumers (rather than the 76 consumers that were actually interviewed). The research is also used inappropriately to substantiate findings (*e.g.*, in relation to the availability of products) that should be evidenced in other ways, rather than through subjective consumer opinions.
34. The flaws in the design and execution of the Consumer Survey (including not only its size, but also the demographic composition of the sample, the lack of clarity around how the sample respondents were recruited, and a lack of neutrality in the questions) are explained in more detail in **Appendix I**. As a consequence, the results generated by the Consumer Research cannot be considered representative or unbiased, and no serious weight can be given to this evidence.



III. The Interim Report fails to properly recognise the competitiveness of the IF market.

(a) Introduction

35. A CMA market study is intended to assess whether a market is working well. The CMA's guidance explains that when markets are working well, "*firms compete to win business by achieving the lowest level of cost and prices, developing better products and services or exploiting their strengths, skills, and other advantages to meet consumers' needs more effectively than their rivals. This process encourages innovation and provides consumers with increased choice*".⁶
36. Contrary to what the CMA's Interim Report suggests, all of these indicators are present in the IF market. In particular:
- The nature of IF, as a consumer healthcare product, means that **consumer demand is driven, to a significant extent, by innovation, safety, and trust**. As the available evidence shows, manufacturers respond to this demand and innovation in IF has delivered, and continues to deliver, tangible benefits for babies, parents and caregivers. The level of continued investment in R&D by certain manufacturers (including Danone UK) also demonstrates their belief in the substantial potential for further scientific advancements to improve the nutritional quality and health benefits of IF. Brand plays a key role in meeting those consumer needs, helping to incentivise manufacturers to invest in innovation, product quality, and exemplary production standards.
 - The **market is highly contestable**. There have been multiple examples of successful entry into the IF market, and the conditions exist for further entry in the future.
 - Overall, **competition in the market is functioning well**: consumers are responsive to new entry and price changes, manufacturers react to competition from rivals, and retailers effectively leverage their buying power to constrain manufacturers. While, as reflected in the CMA's guidance, manufacturers in competitive markets will attempt to minimise costs, this does not exclude that where market-wide cost inflation arises, manufacturers can typically be expected to increase prices in line with costs, in a manner consistent with maintaining the long-term sustainability of their business.

(b) *Manufacturers continue to deliver tangible value to consumers through investment in innovation and safety; and brand plays a key role in substantiating and delivering these outcomes*

37. The Interim Report notes that IF 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*".⁷ In this way, the Interim Report recognises the "high stakes" nature of IF – *i.e.*, as a consumer healthcare product relied upon by babies, often as their sole source of nutrition, whilst also meaning that the market has a unique combination of features that must be taken into account in the CMA's assessment of how the market functions.
38. Competition in the market reflects these features. In particular, the nature of IF means that many consumers place a very high value on innovation, safety and trust when choosing an IF product, given that they "*[u]nderstandably...want to do the best for their babies*".⁸ But the regulatory restrictions also impose limits on how manufacturers and retailers can

⁶ Market studies, Guidance on the OFT approach, para. 2.5.

⁷ Interim Report, para. 3.2.

⁸ Interim Report Executive Summary, para. 7.



communicate with or otherwise engage with consumers. Taken together, these factors have implications for how manufacturers compete, in particular in relation to innovation and R&D, safety and quality, and trust.

39. **Whilst the CMA’s analysis takes some of these factors into account, it fails to recognise the dynamic benefits of innovation, safety and consumer trust, as well as the critical role of branding in conveying these factors to consumers.**

i. *Innovation and R&D are critical competitive parameters to meet consumer demand for better products and to improve health outcomes*

40. As the Interim Report recognises, all IF products must meet minimum nutritional standards. But the legislation only imposes a minimum nutritional standard and does not restrict manufacturers from developing their product offerings to bring further nutritional improvements by introducing sophisticated new product formulas, backed by extensive scientific research. This is done to meet consumer demand for ever-better products, and facilitates continued medical advances.⁹ For example, Danone UK’s IF brands are enriched with specific ingredients which promote the healthy development of infants’ gut health and immune system. Danone UK’s premium product range (Aptamil Advanced) includes additional key nutrients which support infants’ inflammatory and immune responses and neural development.¹⁰

41. While the CMA acknowledges there have been examples of product differentiation and innovations that have “*brought valuable benefits to parents and babies*”, the Interim Report also states that, because “*legislation ensures that all infant formulas provide all the nutrients a healthy baby needs for development and growth*”, there is only “*limited scope for manufacturers to compete by offering products that are materially differentiated on nutritional quality*” (emphasis added).¹¹

42. **The CMA does not have the expertise to assess whether product differentiation is “genuine” or achievable, nor whether further innovation on nutritional quality or other IF features is possible;** and it does not appear to have engaged any independent technical experts to make such an assessment in the context of this Market Study.¹²

43. As a result, the CMA’s conclusions on the role of innovation in the IF market are flawed in material ways:

a. Despite citing examples of previous innovations (including past innovations brought to the UK market by Danone UK, as described further below), the Interim Report then fails to properly acknowledge manufacturers’ ability to **genuinely enhance the nutritional quality of IF**, to the benefit of consumers.¹³

⁹ This is supported by consumer research, for instance, [REDACTED]

¹⁰ Danone UK’s Confidential Submission dated 8 May 2024, paras. 65 and 80.

¹¹ Interim Report, para. 7.79.

¹² Danone UK notes that, in contrast to other CMA proceedings (such as (i) the Veterinary services for household pets market investigation, in which an “advisory panel” of experts has been appointed, and (ii) the Mobile browsers and cloud gaming market investigation, in which independent experts provided technological advice on the subject of mobile device software security, mobile browsers and Internet standardisation), the CMA does not appear to have sought any independent technical input into its Market Study.

¹³ [REDACTED]



- b. The CMA also puts forward an unsupported and baseless suggestion that no further scientific progress is possible in this space.¹⁴ This position is wholly inconsistent with **Danone’s continued investment in R&D** (in 2023, Danone’s R&D spend in relation to its early life nutrition business in Europe amounted to £ [REDACTED] million),¹⁵ **with the aim of bridging the gap between its current IF product offering and breastmilk**, as evidenced in [REDACTED].¹⁶ It is clear that differentiation based on nutritional benefits is an important element of competition in the market both now and in the future, as several manufacturers continue to invest in resource-intensive R&D activities which (like all R&D activities) have uncertain prospects of success.
44. The history of the IF market shows significant product improvement over time (as a result of certain manufacturers’ considerable investment in R&D and product innovation, driven by consumer demand for improved formula products). This is directly reflected in aspects of the Interim Report (as well as in other evidence received by the CMA).¹⁷ For example:
- a. The DHSC recognises that *“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”*.¹⁸
- b. The Interim Report recognises that the current minimum compositional requirements include components that were implemented into legislation as a direct result of significant scientific discoveries and advancements made through manufacturers’ R&D activities.¹⁹
- c. An anonymous response to the ITC confirms that research efforts of both the industry and academic community have led regulations to adapt to developing trends and the latest scientific understanding, and that these R&D efforts conducted by the academic community together with the industry continue to help uncover new components within breastmilk.²⁰
45. This continued demand for “better” products drives ongoing dynamic competition in this market, and has a strong influence on manufacturer behaviour. Accordingly, the CMA is incorrect to downplay the substantial evidence of innovation competition and the continued focus on product development.

¹⁴ Interim Report, para. 7.79.

¹⁵ Danone UK has provided the CMA with extensive information on its R&D process, the significant resources it deploys to support its R&D activities and the key breakthroughs its research has produced. See e.g., Section IV of Danone UK’s Confidential Submission dated 8 May 2024.

¹⁶ For example, [REDACTED]

¹⁷ The role of innovation within the competitive process is also recognised, more broadly, in the CMA’s draft guidance, which notes that when firms face competition (either from existing competitors or the threat of entry by new competitors), the possibility of generating high profits or protecting existing profits encourages them to discover new products and processes. See para. 4.25 of the CMA’s draft “Markets Substance Assessment Guidance” (5 November 2024). This suggests that the CMA considers that innovation and product development are, in general, factors that should be given material consideration in market studies.

¹⁸ Interim Report, para. 3.16.

¹⁹ For example, the Interim Report acknowledges that manufacturers have brought genuine advancements for parents and their babies which were then implemented into regulations as recently as 2020, when it became mandatory to include docosahexaenoic acid (*DHA*) in IF and FOF, which Danone had been including in its IF products since 1992. See Interim Report, para. 7.73.

²⁰ See Anonymous response to the CMA’s invitation to comment (https://assets.publishing.service.gov.uk/media/672cc980bd79990dfa67cb36/_Anonymous_response_.pdf), p.4.



ii. Quality and safety are fundamentally important aspects of IF products - for manufacturers and parents

46. One of the key drivers for the CMA's Market Study has been the role of IF as a "high stakes" product.²¹ The fact that the product is relied upon by babies (and often as their sole source of nutrition) means that parents and caregivers must be confident in the quality and safety of the product they are purchasing. In turn, manufacturers must invest in establishing and maintaining standards of product quality and food safety that are commensurate with consumer healthcare products. However, the CMA appears to have underestimated this key dimension of consumer demand and its relevance as a competitive driver between manufacturers.
47. Several market participants have emphasised to the CMA the importance of product safety and the investment required to establish and maintain rigorous production processes capable of meeting stringent quality and safety standards.²² This means that manufacturers are, in practice, under constant pressure to earn and maintain consumer trust by producing safe and high quality IF products.²³
48. As previously explained to the CMA, Danone UK goes beyond minimum legislative requirements and follows strict quality and safety standards for its baby formula products. This is reflected in Danone UK's IF supply chain, with significant resources devoted to the production, monitoring, testing and distribution of its products.²⁴ As quality and safety are fundamentally important aspects of IF products that are valued by consumers, and invested in by manufacturers (possibly to varying extents, depending on how they wish to position their products in a competitive market), it is critical that consumers are able to take these factors into account when making purchasing decisions.

iii. In keeping with the nature of consumer healthcare products, brand equity plays a key role in communicating (legitimate and verifiable) benefits to consumers, while incentivising innovation

49. The Interim Report states that "*brand awareness and reputation may play an outsized role in brand choice*" due to the regulatory restrictions on the advertisement and promotion of IF, leading manufacturers to strongly focus on brand building. Despite the Interim Report's acknowledgment that "*brand building can often usefully inform consumers of product features and differences*", the CMA then appears to criticise IF manufacturers for "*signalling trustworthiness and superiority via intangible and/or non-verifiable benefits rather than specific and verifiable points of difference*", while also suggesting that this behaviour enables manufacturers to "*justify*" price differences between certain products.²⁵
50. **The CMA's assessment not only fails to recognise the importance of branding in incentivising manufacturers' continued investment in innovation and safety, but also presents a misguided framework for evaluating the value of manufacturers' brand-building and reputation efforts.** This framework is based on a subjective assessment of what the CMA considers to be "*genuine*" versus "*intangible*" benefits offered by IF products. The CMA draws an artificial distinction between what it considers to be "*intangible and/or non-verifiable benefits*" (with use of phrases such as "*inspired by research*" or "*advanced*") and "*verifiable points of difference*" (including "*organic*" and "*vegetarian*" features),²⁶ which it views more favourably.²⁷

²¹ Sarah Cardell, the CEO of the CMA, noted in a press release on 20 February 2024 that: "*Infant formula is a key part of the weekly shop for many parents across the UK, who rely on these products to ensure their baby gets all the essential nutrients they need*": see [here](#).

²² Interim Report, para. 7.21.

²³ Section III.C of Danone UK's Confidential Submission dated 8 May 2024.

²⁴ Section III.C of Danone UK's Confidential Submission dated 8 May 2024.

²⁵ Interim Report, para. 7.101(d).

²⁶ Interim Report, para. 7.73.

²⁷ Interim Report, para. 7.74.



51. The benefits offered by Danone UK's brands are not only legitimate and genuine benefits: they are also verifiable, even if public policy restrictions aimed at protecting breastfeeding currently limit manufacturers' ability to communicate certain IF benefits to consumers.²⁸
52. Indeed, Danone UK's conviction in the objective benefits of its products is demonstrated by its support for the CMA recommendations in the Interim Report that aim to enhance consumers' access to clear, accurate and impartial information about IF, including about specific brands (see Section IV).
53. In particular, Danone UK's products surpass the minimum compositional requirements set out in legislation and also offer certain additional nutritional/health benefits.²⁹ In this regard, Danone UK's brands reflect the products' superior nutritional quality, conveying important information about key product features which, in turn, empowers parents and caregivers to make well-informed purchasing decisions in accordance with their personal priorities.
54. As product safety is paramount, it is perfectly rational (and consistent with a competitive market) for parents and caregivers to place value in a trusted brand with a proven track record that signifies high levels of compliance and safety standards. Equally, gaining and maintaining consumer trust, which is built up over time, is essential for any healthcare product manufacturer's success and forms a crucial part of a manufacturer's brand equity.³⁰ Conversely, an IF quality or safety failing can be highly detrimental to the health of a vulnerable consumer group and ruinous for the reputation of the IF manufacturer.³¹
55. It is precisely in this context that IF manufacturers build their brand reputation around trustworthiness, which underpins a commitment to continuing to uphold these strict quality and safety standards (thereby keeping manufacturers "in check"). In this way, brand equity ultimately fosters competition between IF manufacturers and results in safer and higher quality products being brought to market.

(c) The market is highly contestable – recent entry in the market has been successful and there is a real prospect of further entry

56. The CMA has fundamentally mischaracterised the dynamic nature of the IF market and underestimated the potential for new market entry and growth in three key ways.
57. **First**, the CMA fails to acknowledge that this is a **dynamic and highly competitive market**, which has seen significant recent entry and expansion, with three new suppliers in the last 10 years. New entrant brands, such as Kendamil and Mamia, have been able to rapidly grow and capture a significant share of the IF market, which demonstrates that barriers to entry are significantly lower than the CMA suggests.
58. **Second**, the CMA cites "*limited suitable manufacturing capacity*" as a key barrier to entry for new (or expanding) players.³² It is unclear how the CMA has come to this conclusion, which is completely at odds with the **ready availability of spare capacity in Europe**, where most UK-bound IF is manufactured today.

²⁸ See Danone UK's response to Question 20 of the CMA's section 174 notice of 27 June 2024.

²⁹ See Figure 3 of Danone UK's Confidential Submission dated 8 May 2024.

³⁰ See Danone UK's response to Question 22 of the s.174 Notice of 27 June 2024.

³¹ Para. 31 of Danone UK's Confidential Submission dated 8 May 2024.

³² Interim Report, paras. 7.19-7.20.



59. **Third**, the CMA has failed to acknowledge the **full impact of the recent entry and expansion in the market, and underestimates the potential for further disruption**. In particular, despite recognising Kendamil’s successful entry into the market, the CMA considers (for no justifiable reason) that Kendamil’s success is “*unlikely to be replicated by other potential entrants*” and that there is a “*lack of credible actual or potential entry at meaningful scale by any other firms*”.³³ Contrary to the CMA’s provisional view, there is no reason why the recent success of new entrants such as Kendamil could not be replicated in the future by another entrant with a sufficiently attractive proposition. In fact, the market continues to show very recent evidence of further product differentiation by existing players (e.g., Kendal’s Bonya product) and additional own-brand entry (e.g., Lidl’s Lupilu product).

i. *The IF market has seen significant recent entry and expansion, with three new suppliers in the last ten years*

60. In the last ten years, two new players have successfully entered (and significantly expanded) within the supply of IF and FOF: Kendamil and Aldi’s own-label product (Mamia). A third new player has recently also entered the market: Lidl’s own-label product (Lupilu), which was launched in August 2024.³⁴ Within the same period, new brands have been launched by established manufacturers (i.e., Kendal and Nestlé). This is a significant amount of entry on any basis.³⁵

61. Since entering the market, Kendal has rapidly gained share and has become the second largest manufacturer of IF in the UK, surpassing Nestlé (SMA) with a [20-30]% share by value in 2024.³⁶ Kendal has also recently expanded in the value segment through the launch of its Bonya product in November 2024.³⁷

62. Mamia, Aldi’s own-label IF, also imposes an increasing competitive constraint on Danone UK, having grown its market share by value to approximately [0-5]% based on the CMA’s data.³⁸ Danone UK estimates that Aldi’s market share by volume is even larger (approximately []%).³⁹ Since its launch in 2016, Danone UK [] has also taken commercial steps to respond to competition from Mamia, including through []⁴⁰

63. The size of the market share gains achieved by both Kendamil and Mamia are, by any standard, strong indicators that competition is working well. By way of example, in the earlier stages of the CMA’s work on price inflation and competition in food and grocery manufacturing, the CMA characterised consumer switching of 10 percentage points from branded to own label alternatives of baked beans as being “*particularly pronounced*” (and as evidence that competition between

³³ Interim Report, para. 7.9.

³⁴ Interim Report, para. 7.7.

³⁵ In the context of the ‘music and streaming services’ market study conducted by the CMA in 2022 (see Final Report at: <https://www.gov.uk/government/publications/music-and-streaming-market-study-final-report>, paras 1.41-1.46), the CMA found that, following the entry of Spotify, there were now “*multiple firms offering music streaming services*”, including large integrated tech firms (Amazon, Apple Music and YouTube Music) as well as dedicated streaming services (Deezer, Tidal and SoundCloud). Market entry and expansion by dedicated streaming services was found to be material, despite the combined market shares of these players being below 5% (that is, a much smaller position than Kendamil in the IF market, which holds a [20-30%] market share).

³⁶ Interim Report, Table 4.1.

³⁷ See <https://bonya.com/>.

³⁸ Interim Report, Table 4.1.

³⁹ [] Danone UK estimates Mamia’s market share by volume (measured in terms of dry kg) across IF (i.e., Core IF and lactose free) as approximately []% as of 2023. Danone UK notes that Kantar data covers a relatively small sample size and therefore interprets these figures with caution.

⁴⁰ For completeness, Danone UK notes that []



manufacturers of baked beans was not weak or ineffective).⁴¹ Consumer switching of similar scale in the supply of IF supports the same conclusion.

ii. *There are multiple entry points for new entrants and the ready availability of spare capacity in the market, in particular, would facilitate the prospect of further entry*

64. Notwithstanding the Interim Report's suggestion that barriers to entry are significant, it recognises that new entrants could either purchase their own manufacturing facilities or outsource production to third-party manufacturers.

65. Outsourcing is common practice within the industry. For example, both Aldi and Lidl are using third-party manufacturers,⁴² and Kendal has stated that it is partnering with an additional "world-class facility" (in addition to owning, and expanding, its own facilities).⁴³ For the avoidance of doubt, new entrants would not be limited to using UK-based manufacturing facilities. [REDACTED]

66. The CMA suggests in its Interim Report that there is limited suitable manufacturing capacity.⁴⁴ **This is manifestly inconsistent with the available evidence.** There is plenty of spare capacity available [REDACTED]

⁴⁵

67. To Danone UK's knowledge, a number of suppliers that currently supply third-party manufacturing services to manufacturers active in the UK/Europe have spare capacity. [REDACTED]

68. Overall, this shows that UK brands and potential future entrants would have access to ample spare production capacity to expand or start production, whether through acquiring their own plants or via third-party manufacturers [REDACTED].

iii. *Recent successful entry and expansion could be replicated by further new entrants*

69. The Interim Report suggests that the barriers to entry and expansion in the IF market are high, despite the direct evidence of recent examples of entry and expansion. The CMA relies on extremely limited and selective evidence to support this position. To take just a few examples, the Interim Report's evidence base is particularly insupportable in relation to:

⁴¹ Price inflation and competition in food and grocery manufacturing and supply, CMA (29 November 2023), paras. 4.14 - 4.15.

⁴² Interim Report, para. 7.7.

⁴³ Kendamil is in the process of expanding its factory in Kendal, in the Lake District (see <https://kendamil.com/pages/a-message-from-our-family-founders>) and it has also recently acquired a new facility in Knighton, Staffordshire, which is due to be fully operational in the next two years (see Kendal Nutricare expands with site acquisition - investment planned for former Premier Foods base | Insider Media).

⁴⁴ Interim Report, paras. 7.19-7.20.

⁴⁵ See Annex R.11, [REDACTED].



- a. The availability of **suitable manufacturing capacity** in the UK and the rest of Europe (as explained in more detail at paragraphs 64 to 68 above), where the CMA’s position is based on information received from “*several stakeholders*” and ignores direct evidence on available manufacturing capacity (which Danone UK has, for the CMA’s convenience, submitted as part of this response).⁴⁶
 - b. The **need to develop a sufficiently differentiated offering** as a barrier to entry, which is based on a submission by just one manufacturer of baby and toddler feeding products, and ignores the direct evidence relating to Kendal, Mamia, and Lidl entering the market with differentiated products.
 - c. The **restriction on advertising and promoting IF to parents** as a barrier to entry,⁴⁷ which is based on comments from one retailer and one manufacturer only. This is at odds with the CMA’s acknowledgement of the direct evidence that Kendal has “*managed to win substantial market share despite these restrictions*”.⁴⁸ The CMA’s position also overlooks the fact that discounters such as Aldi and Lidl (and any other retailers considering private label entry) [REDACTED]
 - d. The **pricing constraints imposed by Danone UK’s competitors** are assessed based on the evidence provided by just two players (Nestlé and HiPP), with the CMA failing to take into account Kendamil and Mamia,⁴⁹ both of which are important competitive forces in the market. While Danone UK provided extensive contemporaneous evidence on its pricing strategy in the IF market throughout the Market Study (in response to statutory information requests), the CMA appears not to have adopted the same rigour when engaging with Kendal on this issue (with the Interim Report simply stating, with no further explanation, that the CMA does not have “*documentary evidence*” from Kendal).⁵⁰
70. The Interim Report then relies on this limited and selective evidence to conclude that these barriers to entry collectively mean that further meaningful entry is unlikely. It is not necessary, however, for the CMA to make a hypothetical assessment of barriers to entry in this market, as the evidence of actual recent entry (in relation to the entry of Kendamil and Aldi in particular) shows that successful entry and expansion is possible and that any barriers are not insurmountable.
71. The recent decision of Lidl to enter with an own-label product ([REDACTED]) further demonstrates the scope for further entry. In particular:
- a. The **ability to outsource production to third-party manufacturers** (which was the preferred route of Aldi and Lidl) allows brands to avoid any upfront capital expenditure in the acquisition of production facilities and the need to make up-front investments in product safety and quality.
 - b. **Increasing consumer switching** between products and **high consumer churn** allows new entrants ready access to new customers. The success and growth of both Kendamil and Mamia in capturing material market share, demonstrates that there is consumer demand for such products and such entry can be both profitable and sustainable.

⁴⁶ See Annex R.11, [REDACTED].

⁴⁷ Interim Report, para. 7.31

⁴⁸ Interim Report, para. 7.32.

⁴⁹ In relation to constraints posed by Danone UK’s pricing, paragraph 7.59 of the Interim Report notes that the CMA “*does not have documentary evidence from Kendal*”.

⁵⁰ Interim Report, para. 7.59.

- c. New entrants have plenty of **scope to differentiate** their products. Points of differentiation could include (but would not be limited to) nutritional benefits, nature of ingredients (*e.g.*, organic, vegetarian etc.), pricing (as in the case of private label entry), packaging (*e.g.*, recyclability), and product format. Given the history of this product market (which shows a range of different offerings coming to market), there is no basis to conclude that the industry has reached “the end of history”, with no feasible prospect of further product differentiation.⁵¹
- d. High marketing costs are not a material barrier to entry. The Interim Report indicates that the most successful recent new entrant, Kendamil, has **spent less than other manufacturers on marketing** while building its sizable market position.⁵²

⁵³

72. Taken together, this evidence indicates clearly that Kendamil’s entry could be replicated by another entrant with a sufficiently attractive proposition.

(d) Competition is working as it should – driving price-related responses, manufacturer innovation and increasing choice for consumers

73. The Interim Report makes a number of claims regarding competition in the market that are manifestly incorrect and inconsistent with the evidence. Specifically, the CMA provisionally concludes that:

- a. *“Manufacturers judge that consumers are relatively unresponsive to price movements in infant formula and follow-on formula”.*
- b. *“[T]he 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”* and specifically identifies Danone UK as a *“price leader”*.
- c. *“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.”* And specifically that *“Danone [UK] appears to hold the strongest bargaining position vis-à-vis retailers”*.
- d. *“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”*.⁵⁴

74. These provisional conclusions stand in sharp contrast to the substantial evidence of competition in the market. A “snapshot” of the IF market shows a wide (and increasing) spread of brands offering consumers broad choice across a range of price

⁵¹ The Interim Report is concerned that coming up with a differentiated value proposition – which it views as a necessary condition to enter the market – is *“difficult”* (Interim Report, para. 7.24) but relies on very limited evidence (primarily the response from one manufacturer) in reaching this position. Whilst one participant may struggle to generate ideas for differentiated products, the evidence from the majority of manufacturers who continue to differentiate would not support this.

⁵² Interim Report, para. 7.101.

⁵³ See Annex R.1.

⁵⁴ Interim Report, para. 4.53.



points and differentiated products.⁵⁵ This reflects the fact that a broad range of quality-related factors (in addition to product safety) are important considerations in consumers' decision-making, including innovative formulations and ingredients that offer a range of (scientifically-proven) benefits for babies. Price is an important consideration that parents and caregivers take into account when selecting IF products, but it is not the only important consideration (and, in any case, it is important to recognise that product format changes, such as the introduction of larger pack sizes, can also be an important way of responding to pressure from rivals to provide best value to customers). Danone UK's product offering, which incorporates a wide choice of differentiated IF products with combinations of features, formats, and prices to suit different consumers' individual circumstances and priorities, reflects these dynamics.

75. As explained further below, the evidence demonstrates that consumers respond to entry and changes in price, and manufacturers (including Danone UK) react to competition through price changes, changes to product formats, new brands and continued investment into innovation and quality of their products. Retailers hold significant buyer power that they use (in keeping with their own interests to win customers) to constrain manufacturers. These are all common indicators that competition is working well.

i. Manufacturers recognise that consumers are responsive to price and switch due to entry and price competition

76. Consumers' switching behaviour provides clear evidence that they are responsive to price changes and the entry of new manufacturers and products.

77. Kendamil has rapidly grown and won share,⁵⁶ mainly from Danone UK but also from Nestlé, since entering the market.

[REDACTED]

78. [REDACTED] ⁵⁸ Similarly, [REDACTED] ⁵⁹

79. [REDACTED]

⁵⁵ Danone UK's Confidential Submission dated 8 May 2024, para. 85. [REDACTED]

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ See, for example [REDACTED]

⁵⁹ See Danone UK's response to Question 3 of the s.174 Notice of 27 June 2024.

[REDACTED]

⁶⁰ Danone UK notes that

[REDACTED]; the CMA found that “Nestlé’s internal price elasticity estimates were originally low but [...] were higher later in this period”.⁶¹

80. Overall, the evidence shows that **IF consumers are increasingly responsive to price changes and product switching is material**, which in turn informs manufacturers’ pricing strategies and highlights the importance of price as a competitive parameter in this market. Again, this evidence is consistent with a market in which competition is working well.

ii. Danone UK has reacted to competition from Kendamil and Mamiia

81. The Interim Report considers that “the intensity of price competition between manufacturers has historically been low”,⁶² and that there are “low levels of [consumer] switching (driven by brand loyalty and price insensitivity)” in the UK IF market. The CMA further considers that it has “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”.⁶³ However, as set out in detail below, it is clear that consumers do respond to entry and changes in price, with manufacturers reacting strongly to competitive developments in the market, including the entry of Kendamil.

82. The Interim Report suggests that Danone UK is the “clear price leader” in the market and is “able to set its prices with limited regard for its competitors’ pricing”. **These conclusions are not supported by the underlying evidence, but instead rely on a highly selective reading of manufacturers’ internal documents, rather than a balanced analysis of the data and evidence available to the CMA.** This unsubstantiated observation also ultimately has no bearing on the provisional recommendations made by the CMA in the Interim Report and serves only to undermine the overall reliability and value of the Interim Report. These references to Danone UK as a “price leader” therefore cannot be maintained in the final report.

83. As the more detailed analysis provided in Appendix II demonstrates, the CMA’s suggestion that Danone UK is a “price leader” and has “limited regard” for its competitors’ pricing is wholly unsupported, and the CMA has made material errors in assessing the available evidence, which in fact shows significant price competition in practice. In this way, the Interim Report’s provisional conclusions are not supported by the underlying evidence, but instead rely on a highly selective and superficial reading of manufacturers’ internal documents.

84. Pricing analysis that incorporates a balanced assessment of a more comprehensive set of qualitative as well as quantitative evidence shows that there is no evidence of price leadership (as that term should be properly understood) by Danone UK, or any other single competitor, in the market.

85. Kendamil is a key competitor to Danone UK. As the Interim Report recognises, since entering the market in 2016, Kendamil has rapidly gained market share and, by 2024, has become the second largest manufacturer of IF in the UK.⁶⁴ Kendamil’s significant growth in market share has come at the cost of existing brands, [REDACTED].

⁶⁰ See [REDACTED].

⁶¹ Interim Report, para. 7.54(b).

⁶² Interim Report, para. 7.60.

⁶³ Interim Report, para. 7.101(g).

⁶⁴ Based on the CMA’s own revenue market shares (Interim Report, para. 4.6)



86. The Interim Report underplays the role of Mamia, Aldi’s own-label IF, which also imposes an increasing competitive constraint on [REDACTED], having grown its market share by value in IF to approximately [0-5]% according to the CMA, since being launched in 2016. [REDACTED].⁶⁵
87. In its previous submissions, Danone UK explained to the CMA that [REDACTED].⁶⁶
88. Danone UK has also reacted in other ways to increased competition, driven in part by the entry and growth of competitors and in part by the growing importance of value-for-money in driving consumer decision-making during a period of high inflation.
89. One particularly notable competitive reaction was the introduction of the 1.2kg “value packs”, which Danone UK was the first to bring to the market (in 2022).⁶⁷ These value packs have a lower price per gram than the 800g format – in part reflecting savings achieved through the cheaper “bag in box” packaging – and [REDACTED]. The introduction of these packs therefore represented an effective price cut (on a per gram basis) for both Danone UK’s Aptamil and Cow & Gate brands.⁶⁸
90. In real terms, this was a very significant competitive response from Danone UK that delivered considerable value for consumers. The 1.2kg value pack for Aptamil offered (and still offers today) a price per gram below that of Kendamil, SMA and HiPP. The 1.2kg Cow & Gate value pack was introduced at a price per kg that was below that of Mamia,⁶⁹ and continues to be below that of Kendal’s new ‘value’ offering, Bonya. In 2023, Danone UK also introduced the Cow & Gate 600g pack, intended to provide the best value on a £/unit basis across the entire IF category (in August 2023, Cow & Gate’s 600g pack was priced at £7.50/unit, while Mamia’s 900g product was at the time priced at £9.39/unit).

⁶⁵ [REDACTED]

⁶⁶ See [REDACTED]

⁶⁷ Despite their growing importance as a share of Danone UK’s portfolio, the CMA makes only one mention of the 1.2kg value packs in the Interim report, recognising that these were introduced in 2020 and have a lower price per gram than the 800g packs. See Interim Report, para. 4.31.

⁶⁸ See [REDACTED]

⁶⁹ For example, in August 2023, Cow & Gate’s 1.2kg value pack was priced at £10.42 per kg, whilst Mamia’s 900g product was priced at £10.43 per kg.



91. Danone UK's own data shows [REDACTED]

[REDACTED], the introduction of this "value pack" format ([REDACTED]) represents a competitive response to increased competitive pressure [REDACTED].

92. This underlines that Danone UK does, in practice, react to pricing pressure and use price changes (including changes to product format) as a tool to respond to competitor offerings.⁷⁰

iii. Retailers exercise significant buyer power

93. The Interim Report recognises the unique and important role that large retailers play within the supply of IF. The retailers are recognised as "large and commercially sophisticated entities that routinely deal with hundreds if not thousands of suppliers, including major global fast-moving consumer goods suppliers".⁷¹ The Interim Report also notes that "[retailers] are the single most important distribution channel for formula manufacturers in the UK",⁷² and that "the five largest retailers of formula milks (Asda, Boots, Morrisons, Sainsbury's, and Tesco) together accounted for [60-70%] of total infant formula [...] (by revenue) in 2023".⁷³ This is in line with the CMA's recognition of the buyer power exerted by retailers in the groceries sector across various aspects of its previous work.⁷⁴

94. However, despite acknowledging that retailers are a large and powerful force within the IF market, the CMA appears to have accepted at face value the submissions made by retailers suggesting that they lack buyer power, including on the basis that their manufacturer counterparties are "sophisticated, multi-national entities".⁷⁵ This is plainly insupportable, given the other evidence (in relation to the size and sophistication of these retailers) cited in the Interim Report.⁷⁶ Moreover, the retailers' submissions were not tested with Danone UK and the CMA's provisional position does not appear to take into account evidence submitted by Danone UK.

95. The Interim Report makes three critical errors, in particular, in reaching its provisional conclusions in relation to retailer buyer power.

⁷⁰ Danone UK notes that it has also introduced larger "bulk buy" formats of liquid products in order to offer options to consumers that are more cost-efficient per bottle, as set out in Danone UK's Response to Question 1 of the CMA's s.174 Notice of 27 June 2024 – Rolling Data Request, submitted on 13 September 2024.

⁷¹ Interim Report, para. 7.87.

⁷² Interim Report, para. 7.88.

⁷³ Interim Report, para. 7.26.

⁷⁴ The unique and powerful role played by large retailers in the UK has also been consistently recognised in the work of the CMA (and its predecessor organisations) over time. The Competition Commission's Market Investigation into the Supply of Groceries in the UK highlighted the extent of the buyer power held by the largest grocery retailers in the UK (which resulted in some restrictions being placed on their supply chain practices). The CMA has also recognised the strong buyer power held by the major retailers in merger investigations, such as Case ME/6677/17, Tesco/Booker ([link](#)) and Case ME/6752-18, Sainsbury's/Asda ([link](#)). In the CMA's investigation of the Cérélia/Jus-Rol merger (which involved a significantly more concentrated market), the CMA noted that grocery retailers told the CMA about "a number of commercial tools by which they seek to ensure prices are competitive" (Final Report, para. 9.319), with the CMA ultimately concluding that "the larger retailers have some negotiating strength as they are sophisticated businesses used to dealing with suppliers and each retailer is an important route for suppliers in this concentrated market" (Final Report, para. 9.330).

⁷⁵ Interim Report, para. 7.96.

⁷⁶ Interim Report, para. 7.87.



96. **First, the CMA has ultimately underestimated the bargaining power of retailers and has overlooked the extent to which policies adopted by major retailers influence and constrain the behaviour of manufacturers.** Market practice shows that the consumer base is not sticky and new entrants can win a material share of customers following the regular churn of the customer base. This means, in practice, that retailers have the ability (given their critical importance as a route to market) to significantly influence and constrain manufacturers’ commercial behaviour.
97. **Second, the CMA has failed to acknowledge retailers’ track record of actively supporting manufacturer entry and expansion.** Retailer market power has a significant impact on the dynamics within the IF market. In particular, retailers play a key role in actively supporting entry and expansion, as evidenced by Tesco’s support for Kendamil from 2022 onwards, [REDACTED]⁷⁷
98. **Third, the CMA has failed to take full account of the ample evidence already provided by Danone UK regarding [REDACTED]** that [REDACTED] Danone UK notes, for example, [REDACTED] As reflected in Danone UK’s internal documents [REDACTED]⁷⁸ For example:⁷⁹
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

⁷⁷ Source: [REDACTED]

⁷⁸ The Interim Report also errs in that the concept of “must carry” products is inconsistent with market reality. Indeed, retailers’ submissions that certain products are “must-carry” is inconsistent with recent market developments. For example, [REDACTED]

⁷⁹ In addition, Danone UK notes that [REDACTED]

⁸⁰ Danone UK’s Confidential Submission, dated 8 May 2024, para. 42.

⁸¹ See Annex R.2, [REDACTED]

⁸² See Annex R.3, [REDACTED]

⁸³ See Annex R.4, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99. At para 7.99 of the Interim Report, the CMA notes that “*some retailers’ internal documents suggest that the degree of bargaining power differs between manufacturers, with Danone [UK] as the market leader appearing to hold a stronger position than its competitors*”.⁸⁸ However, as submitted in para. 94, the CMA seems to primarily rely on retailers’ submissions to the CMA, which Danone UK has not had the opportunity to review [REDACTED], limiting Danone UK’s ability to make representations on this evidence and infringing its procedural rights. The CMA’s finding of Danone UK’s allegedly “*stronger [bargaining] position*” is also entirely inconsistent with Danone UK’s experience of the market (as reflected in the evidence summarised above). The CMA’s observations in relation to retailer buyer power are therefore flawed and their inclusion in the Interim Report does not support the CMA’s provisional recommendations. Overall, the Interim Report’s approach has resulted in a biased and inaccurate impression of the market dynamic and weakens the integrity of the CMA’s position.

iv. Even in competitive markets, manufacturers may reluctantly have to pass on some costs

100. The Interim Report appears to suggest that manufacturers (and retailers) should, in a competitive market, absorb a material share of the higher costs facing all manufacturers. However, this suggestion has no factual or theoretical basis.

101. As the CMA’s own guidance on market studies (cited above) states: “*firms compete to win business by achieving the lowest level of cost and prices*.”⁸⁹ In highly competitive markets, providers have limited ability to absorb industry-wide cost shocks without affecting their long-term competitiveness or sustainability.

102. Contrary to the CMA’s view in the Interim Report, this means that the full pass-through of costs does not, by itself, suggest any lack of competition (as the CMA has also explicitly recognised, for example, in its analysis of groceries pricing).⁹⁰

103. In reality, Danone UK has taken a rational approach to the challenges posed by the inflationary environment and falling volumes in a way that is consistent with operating in a competitive market where manufacturers face static and dynamic competition on both price and non-price factors.

⁸⁴ See Annex R.5, [REDACTED]

⁸⁵ See Annex R.6, [REDACTED]

⁸⁶ See Annex R.7, [REDACTED]

⁸⁷ See Annex R.8, [REDACTED]

⁸⁸ Interim Report, para. 7.99. This is echoed in para. 7.96 of the Interim Report, which provides: “*We consider that there are several reasons why manufacturers, especially the market leader Danone [UK], hold a strong position in negotiations with retailers*”.

⁸⁹ Market studies, Guidance on the OFT approach, para. 2.5 (emphasis added).

⁹⁰ For example, in its update on grocery pricing, grocery retailers aimed to rebuild margins to recover the additional costs they faced as a result of inflationary pressures, which would be consistent with a full pass through of costs in a market considered highly competitive. See paragraph 3.11 of “*Competition, choice and rising prices in groceries*”, CMA (July 2023).



104.

[REDACTED]

105.

[REDACTED]

106. As the CMA recognises, even using the CMA's own metrics (which, as set out in Appendix III overlook important elements [REDACTED]), Danone UK's gross profit margins [REDACTED]⁹⁴ This is also consistent with the headline position that Danone UK's prices and profits are clearly constrained by competitive pressure, and commensurate with the level of investment Danone makes into product safety and quality, as well as the extensive commercial and financial risks incumbent in the supply of IF.

⁹¹ Section VI of Danone UK's Confidential Submission dated 8 May 2024.

⁹² [REDACTED]

⁹³ Section VI of Danone UK's Confidential Submission dated 8 May 2024.

⁹⁴ Interim Report, paras 4.51 and 7.53. Danone UK further notes that the CMA should be cautious about drawing conclusions regarding market responses to cost changes in late 2024 as [REDACTED]



IV. The subset of legitimate concerns in the Interim Report can and should be addressed by enhancing the “Information Environment”

107. For all the reasons summarised above, Danone UK believes that, when the particular context of the IF market in the UK is properly reflected, the key indicators show that the IF market is competitive and dynamic. Danone UK is continually reacting to – and strongly competing with – other IF manufacturers across a range of price and non-price metrics. This intense rivalry provides parents in the UK with the benefit of being able to choose from a wide range of IF products – differentiated by nutritional benefits, quality, product format and price.
108. Nevertheless, Danone UK welcomes the opportunity to provide input on measures that could further improve outcomes for consumers in the IF market. In particular, **Danone UK strongly agrees with the CMA’s position, as set out in its guidance in relation to market studies that: “Competition is enhanced when consumers are empowered to shop around through access to readily available and accurate information about products and services”.**⁹⁵
109. Specifically, Danone UK considers that parents and caregivers need extensive, unbiased information to make informed decisions about what is best for them and their babies.⁹⁶ Danone UK, which has a policy of only sharing nutritional or health information with parents that is factual and science-based,⁹⁷ is confident that the tangible benefits of its products can be justified on an objective factual basis – and is therefore keen to compete, on a level playing field and on the merits, with competitor products. For this reason, Danone UK is (as explained further below) strongly supportive of the CMA’s proposed recommendations that have the potential to further enhance the quality of information being provided to parents and caregivers.
110. On the other hand, a small number of the CMA’s recommendations risk cutting against that overarching objective (in that they would reduce the quality of information available to parents and caregivers), as well as giving rise to other unintended adverse consequences (such as having a chilling effect on innovation and/or investment into product quality and safety). Danone UK considers that these measures are not necessary (in that the CMA’s objectives can be met in other ways) and cannot, in any case, be justified on the basis of the underlying evidence set out in the Interim Report.

(a) Danone UK is supportive of most of the CMA’s proposed recommendations

111. Danone UK supports most of the measures proposed by the CMA, which it believes will enhance the functioning of the IF market to the benefit of parents, caregivers, and babies.
- i. The provision of clear, accurate and impartial information to parents and caregivers is key to the functioning of the IF market*
112. Danone UK fully supports the measures proposed by the CMA that are consistent with Danone UK’s belief that parents and caregivers should have access to clear, accurate and impartial information.

⁹⁵ Market studies, Guidance on the OFT approach, para. 2.5. Further, as noted in para. 4.75 of the CMA’s draft “Markets Remedies Guidance” (5 November 2024), informational remedies can lead to “changes in customer behaviour, for example by reducing search costs, increasing customers’ awareness of alternatives and making it easier for customers to make comparisons between products when making an initial purchase or when switching suppliers”.

⁹⁶ See Annex R.10, Danone Baby Formula Marketing Standards 2024, p.17.

⁹⁷ See Annex R.10, Danone Baby Formula Marketing Standards 2024, p.9.



113. As regards **healthcare settings**, Danone UK supports the CMA’s proposals for: (i) healthcare providers (**HCPs**) to supply clear, accurate and impartial information to parents at key decision points in healthcare settings (including in relation to superiority claims made by manufacturers);⁹⁸ and (ii) HCPs to be supported in taking on a more proactive role in communicating messages to parents.⁹⁹
114. Danone UK believes that HCPs are an important and trusted source of advice for parents and should be able to help improve the quality of information being shared between parents and manufacturers.¹⁰⁰ But, in order to meaningfully fulfil this role, HCPs must have access to better educational support on IF and better access to information on different formulas. For example, Danone UK supports requiring HCPs to obtain professional education credits for attending nutritional educational programmes that cover infant nutrition and breastmilk composition.
115. In 2023, Danone UK commissioned [REDACTED] to carry out research with parents, HCPs and general members of the public in the UK to gain a better understanding of the knowledge and perceptions that these groups hold regarding infant feeding. The results of this research found that most parents want to receive more information on IF than they currently do.¹⁰¹ **However, only 29% of HCPs feel confident in providing advice on IF to parents,¹⁰² primarily because they lack access to trusted sources and the policies governing their ability to provide this information are too restrictive.¹⁰³** Even when HCPs do provide information, there is evidence that major deficits in their knowledge, skills and attitude can result in poor provision of information and support to parents.¹⁰⁴ Therefore, Danone UK suggests that regular surveys should be carried out to assess how confident HCPs feel in being able to provide advice, in order to ensure knowledge remains accurate and up-to-date (particularly given that the composition of IF products changes regularly).
116. Therefore, these measures must be designed in a way that ensures high standards of information provision. Manufacturers must commit to providing information that is up-to-date, accurate, scientifically proven and easily accessible to HCPs (avoiding concerns over misleading or inaccurate information being spread). Further, in adopting a more proactive role, HCPs must commit to follow a strictly factual evidence-based approach.
117. Following examples in the IF¹⁰⁵ and other medical industries,¹⁰⁶ Danone UK believes that a code of practice (**Code**) should be issued to regulate interactions between manufacturers and HCPs in all circumstances (*e.g.*, hospital settings, events, conferences etc.) in order to ensure high standards of ethics, integrity, professionalism, and responsibility across the IF industry. Manufacturers wishing to interact with HCPs should be bound by the Code and the Code would have to be reviewed and approved by the NHS.

⁹⁸ Interim Report, paras. 8.15 - 8.18.

⁹⁹ Interim Report, para. 8.19.

¹⁰⁰ See Annex R.10, Danone Baby Formula Marketing Standards 2024, pp.11-14.

¹⁰¹ See Annex R.9, UK Infant Feeding Research 2023 (research commissioned by Danone UK and carried out by [REDACTED]), p.29.

¹⁰² UK Infant Feeding Research 2023, p.16.

¹⁰³ UK Infant Feeding Research 2023, p.17.

¹⁰⁴ Theory of Change: UNICEF UK Baby Friendly Initiative, p.2.

¹⁰⁵ For example, the interaction between the members of the British Specialist Nutrition Association (**BSNA**) and HCPs is bound by the “*Infant Nutrition Industry Code of Practice*” (noting that certain IF manufacturers (such as Kendamil) are not members of the BSNA and are therefore not bound by this code). Similarly, the interaction between the members of Specialised Nutrition Europe (**SNE**) and HCPs is bound by the “*SNE Code of Practice*”.

¹⁰⁶ For example, the interaction between the members of the European Federation of Pharmaceutical Industries and Associations (**EFPIA**) and HCPs is regulated by the EFPIA Code. Similarly, the interaction between the members of the Association of the British Pharmaceutical Industry (**ABPI**) and HCPs is bound by the “*ABPI Code of Practice*”.



118. In the context of **retail settings**, Danone UK supports the ability of retailers to communicate their prices (and price reductions), so that parents can make more informed decisions on where to buy their preferred products.¹⁰⁷ Retailers are a critical route to market for manufacturers of IF, and have the potential to play a key consumer-facing role in supporting the CMA’s recommendations.
119. With regard to **manufacturers**, Danone’s long-standing global policy prohibits the promotion of IF products, including by publicising prices and price reductions (as Danone is committed to promoting and protecting breastfeeding as the optimal form of nutrition for the first 6 months of life). However, Danone UK recognises that other manufacturers may not apply the same approach and has no objection to enabling IF manufacturers to communicate their prices (and price reductions) (so long as the product-related information that might be communicated by manufacturers at the same time is held to a sufficiently rigorous standard).
- ii. Clarified and strengthened regulations and enforcement would enhance consumer outcomes*
120. Danone UK agrees that the regulations governing the IF market could be clarified and strengthened to ensure positive consumer outcomes. Danone UK would also welcome stricter, quicker, and more consistent enforcement of these regulations (so that all market participants can be confident that breaches of the regulations will both cease and be properly sanctioned).
121. Danone UK therefore supports the CMA’s proposals to: (i) clarify **what constitutes advertising** for the purposes of Regulation 2016/127;¹⁰⁸ and (ii) enhance the **role of the “competent authority”**.¹⁰⁹ Danone UK would also support the **CMA going beyond its current proposal to enhance the role of the “competent authority” by recommending that the authority should be provided with the power to sanction IF manufacturers with penalties for non-compliance with the regulations (with such penalties being used to fund access and/or affordability programmes related to IF to benefit low-income families)**.
122. Danone UK is also in favour of the authority obtaining the power to assess IF products, including with respect to labelling and stage differentiation, before they are approved to be placed on the market, provided requirements are clear and this can be achieved within a reasonable timeline (as existing approval processes tend, in practice, to take longer than is envisaged in the authority’s guidance). Material delays in approving product packaging would undermine the CMA’s overarching objectives (as it would risk decreasing the quality of products available to parents and caregivers). Similarly, a regulatory regime that imposed excessive and disproportionate burdens would also risk undermining the CMA’s broader objectives (e.g., by materially raising the costs of compliance for manufacturers and/or chilling innovation).
123. Finally, Danone has a long-standing global policy of only making health or nutritional claims on the labels of its IF products when they are permitted under local laws and regulations or relevant CODEX Alimentarius¹¹⁰ standards and backed by scientific evidence.¹¹¹ This practice forms part of Danone’s commitment to providing parents with accurate and trustworthy information, ensuring they are not misled and enabling them to make the best feeding choices for their babies. Therefore,

¹⁰⁷ Interim Report, para. 8.45.

¹⁰⁸ Interim Report, para. 8.53.

¹⁰⁹ Interim Report, para. 8.61.

¹¹⁰ The CODEX Alimentarius, or “*Food Code*” is a collection of standards, guidelines and codes of practice adopted by the Codex Alimentarius Commission (the *CAC*). The CAC is the central part of the Joint FAO/WHO Food Standards Programme and was established by FAO and WHO to protect consumer health and promote fair practices in food trade. Please see further information here: [Home | CODEXALIMENTARIUS FAO-WHO](#).

¹¹¹ See Annex R.10, Danone Baby Formula Marketing Standards 2024, p.18.



Danone UK agrees with the CMA's recommendation that stricter thresholds for certain types of claims should be set,¹¹² and that only scientifically-backed/verified nutritional explanations should be permitted in relation to IF products.¹¹³ An independent third party should assess such claims. Again, Danone UK notes that this proposal will only have a meaningful impact if sufficient resources are made available for prompt and consistent enforcement.

(b) Other measures could help the CMA achieve its overarching objective for consumers to “get good value for money” when purchasing IF products

124. In addition, Danone UK believes that certain other measures in relation to retailers could help the CMA to achieve its overarching objective for parents to “get good value for money” when purchasing IF products,¹¹⁴ supporting all parents' access to IF as an essential consumer healthcare product. In particular:

- a. Danone UK suggests that **feeding guidelines should be harmonised** so that price per feed can be more easily compared by consumers. This would facilitate price comparisons between brands (and therefore, in turn, make a helpful contribution towards supporting consumers to make accurate price comparisons between different products).
- b. The regulations should be clarified to enable (i) consumers to purchase IF products with **supermarket loyalty points and other vouchers** accepted by retailers and (ii) **foodbanks and charities to accept donations** of IF products in a similar way to other food products. While Danone UK strongly supports breastfeeding, it considers that these prohibitions stigmatise parents and caregivers who cannot, or choose not, to breastfeed (which the Interim Report rightly notes should be avoided).
- c. The UK government should **increase the value of Healthy Start Vouchers for vulnerable parents, linked to inflation**. In keeping with the Interim Report's focus on ensuring the affordability of IF products (for parents who cannot, or choose not, to breastfeed), it is critical that these vouchers cover the actual cost of purchasing the required amount of IF products.

(c) Certain possible measures in the Interim Report would undermine the aim of ensuring that parents have access to clear, accurate and impartial information, as well as having other adverse, unintended consequences

125. Danone UK considers that the remainder of the CMA's recommendations are informed by findings that are lacking a proper evidential basis. It is not appropriate for the CMA to rely on such findings to support recommendations to the UK government which could have a significant adverse impact on the consumers of an essential consumer healthcare product such as IF.

126. The remainder of the CMA's recommendations are, in any case, not necessary to enhance the functioning of the IF market and in some instances would, in fact, undermine this objective (*i.e.*, because they would limit or distort the information made available to parents). These recommendations would also risk giving rise to inadvertent adverse consequences (such as having a chilling effect on innovation or discouraging parents from buying FOF despite its proven health benefits).

¹¹² Interim Report, para. 8.78.

¹¹³ As noted above, Danone already has a global policy of only sharing nutritional or health information with parents that is science-based and rooted in over 50 years of extensive breastmilk research and development legacy. See Annex R.10, Danone Baby Formula Marketing Standards 2024, p.9.

¹¹⁴ Interim Report, para. 1.8.



i. Consumers must be provided with clear and complete information on IF products

127. As noted above in Section III, Danone has invested heavily in IF innovation, allowing it to offer products that surpass the minimum compositional requirements set out in legislation and also offer additional nutritional/health benefits. Such innovation benefits IF consumers who take into account a broad range of quality factors when selecting IF products, including infant tolerance, nutritional value and inclusion of innovative formulations and ingredients when selecting IF products.
128. As a result, Danone UK has concerns regarding the CMA’s proposals relating to focusing communications to parents and caregivers (in retail settings, such as shelf edges and on the labelling of IF products) on “*nutritional sufficiency*”.¹¹⁵
129. In short, restricting the ability of manufacturers to communicate information that is up-to-date, accurate and scientifically-proven about the nutritional benefits of a product runs counter to the CMA’s overarching objectives. Limiting communications to the binary position that a given product provides “*nutritional sufficiency*” (or not), would not help parents understand the differences between IF products and the potential impact they have on their babies (which could, in turn, have adverse health consequences for infants).
130. If the CMA insists on including information of this nature on shelf edges, it should state that all IF products meet the regulatory minimum standards (as this at least acknowledges the additional health benefits offered by certain IF products) with language to encourage parents to discuss with their healthcare professional (e.g., “*please speak to a healthcare professional for more information on which formula is right for you and your baby*”). Danone UK considers that it would be significantly more helpful to provide accessible and clear information at the shelf edge, for example by including a QR code to an independent website showing the verified health benefits of the various IF products.
131. In addition, the CMA’s attempt to “*level the playing field*” by requiring that manufacturers limit themselves to a statement that their IF products provide “*nutritional sufficiency*” risks disincentivising innovation and leading to a race to the bottom in terms of quality. As noted above, it would be more effective (and consistent with promoting competition) to level the playing field by implementing stringent rules requiring the information relating to IF products to be scientifically-backed and properly verified.

ii. FOF has proven health benefits for infants

132. Danone UK strongly believes in the nutritional importance of FOF, which (as explained below) is supported by expert evidence. FOF products offer an alternative option that is specifically tailored to the nutritional needs of babies moving to a mixed diet with the introduction of complementary foods.
133. FOF was first developed in the 1960s,¹¹⁶ in response to research that highlighted that a significant number of infants aged six months plus were consuming unsuitable drinks,¹¹⁷ and has subsequently been developed to provide increasingly sophisticated and tailored nutritional benefits for babies of this age.

¹¹⁵ Interim Report, paras. 8.35-8.36.

¹¹⁶ FOF predates the development of the 1981 WHO Code on marketing breastmilk substitutes.

¹¹⁷ For example, in 1973 C. Elaine Field and Flora M. Baker published “*Growing up in Hong Kong*”, which noted that although infants were well fed during their first few months of life, their diets were inadequate from around four months, with low intake of iron, calcium and vitamin D.



134. In particular, FOF is fortified with increased levels of iron compared to IF. This is a critical differentiating factor between FOF and IF, as healthy babies have enough iron stored in their bodies to meet their needs for approximately the first six months of life, but their iron stores can start to run low approximately after the six-month mark.
135. This was reflected in a comprehensive survey carried out by the (then) Department of Health and Food Standards Agency, the Diet and Nutrition Survey of Infants and Young Children (*DNISIYC*), which found that children between six months and two years of age are particularly at risk of being deficient in vital micronutrients, including iron and vitamin D.¹¹⁸ As it can be difficult for babies to consume sufficient iron-rich foods during the weaning process to provide the levels that their bodies need, FOF is a critical source of critical nutrients for babies at this stage of their development.
136. The importance of FOF is also reflected in the (recently updated) CODEX Alimentarius standard, which sets the nutritional standard for FOF for older infants (between 6-12 months of age), considering the unique dietary requirements of this age group.¹¹⁹ This standard translates the existing scientific consensus on nutritional intake into rules for the composition of these FOF product categories. The standard also ensures that the FOF products support the nutritional needs and healthy growth and development of older infants during a critical growth period.
137. To support parents in navigating their baby's feeding journey and making informed choices based on their baby's age, Danone offers clear and distinct product stages aligned with CODEX Alimentarius standards: Stage 1 (0-6 months), Stage 2 (6-12 months), Stage 3 (12-36 months), and Stage 4 (36+ months). By offering distinct stages, Danone ensures that each product is formulated to meet the nutritional requirements of each age group. This approach helps parents navigate their child's feeding journey with confidence, ensuring that their babies receive optimal nutrition at every stage of development.
138. For these reasons, Danone UK does not believe that it is appropriate for the CMA to promote messaging (either through HCPs or in retail settings) that the use of FOF is "*optional*".¹²⁰
139. **Widespread messaging that the use of FOF is "*optional*" risks raising confusion for parents and caregivers.** As reflected throughout this response, one of the main themes emerging from the CMA's work is to ensure that parents and caregivers are provided with the necessary information to make well-informed choices. Focusing communications in relation to FOF on the headline position that the use of this product is "*optional*" risks leading parents to switch away from FOF altogether, in favour of cow's milk. This could have material adverse consequences on infant health. Leading international experts,¹²¹ including the European Society for Paediatric Gastroenterology, Hepatology and Nutrition (*ESPGHAN*)¹²² and the Federation of International Societies of Paediatric Gastroenterology, Hepatology and Nutrition

¹¹⁸ Alison Lennox, Jill Sommerville, Ken Ong, Helen Henderson and Rachel Allen, *Diet and Nutrition Survey of Infants and Young Children*, 2011. Available here: 2011 [DNISIYC UK report ALL chapters DH V10.0.pdf \(publishing.service.gov.uk\)](#).

¹¹⁹ See CODEX Alimentarius "Standard for follow-up formula for older infants and product for young children" (CXS 156-1987), available here: [fao.org/fao-who-codexalimentarius/sh-proxy/it/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B156-1987%252FCXS_156e.pdf](https://www.fao.org/fao-who-codexalimentarius/sh-proxy/it/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B156-1987%252FCXS_156e.pdf) (last updated in 2023). The CODEX Alimentarius is a collection of internationally adopted food standards and related texts aimed at protecting consumers' health and ensuring fair practices in the food trade, see further at: <https://www.fao.org/fao-who-codexalimentarius/about-codex/tr/>.

¹²⁰ Interim Report, paras. 8.20, 8.38.

¹²¹ Koletzko, B., et al., Optimized protein intakes in term infants support physiological growth and promote long-term health. *Semin Perinatol*, 2019. 43(7): p.151153.DOI: 10.1053/j.semperi.2019.06.001.

¹²² Fewtrell, M., et al., Complementary Feeding: A Position Paper by the European Society for Paediatric Gastroenterology, Hepatology, and Nutrition (ESPGHAN) Committee on Nutrition. *J Pediatr Gastroenterol Nutr*, 2017. 64(1): p.119-132.DOI: 10.1097/MPG.0000000000001454.



(FISPGHAN),¹²³ do not recommend using cow's milk as a main drink for infants before the age of twelve months. The main reasons for this recommendation include that cow's milk is a poor source of iron and can provide more protein, fat and energy than infants need at this age, unintentionally contributing to an increase in the risk of overweight and obesity, including double-burden malnutrition.¹²⁴ The composition of IF and FOF are much closer to breastmilk than cow's milk and are therefore considered more suitable alternatives when breastfeeding is not possible. In Europe, most dietary guidelines for infants and young children recommend introducing cow's milk only after twelve months.¹²⁵

140. **Danone UK's overriding objective is to ensure that parents and caregivers are using the best possible product for their babies.** As noted above, FOF is designed to be the main liquid component in a progressively diversified diet, while IF is designed to be the sole source of nutrition for an infant until the introduction of complementary feeding.

141. **The best solution to the CMA's concerns remains to improve the quality of information available to parents and caregivers.** Within this context, Danone UK strongly believes that the best approach to ensure that competition is working well is to provide consumers with readily-available and accurate information about the merits of all of the products available on the market. As with IF, ensuring that verified and scientifically-backed information is available, including in relation to the nutritional benefits of both IF and FOF, is the best way of supporting parents who are considering the use of that product (rather than unduly restricting the quality of information that is made available to them). In this regard, as explained in Section IV(a)(ii), Danone UK believes that clarifying and strengthening the existing regulations regarding what can be communicated to parents in terms of nutritional product claims on FOF packaging and related advertising, is the best way of achieving the CMA's overarching objectives.

142. **There is no basis for a blanket prohibition on the advertisement of FOF.** Danone UK does not advertise IF in order to comply with the advertising restrictions imposed by the regulations and to protect and promote breastfeeding. FOF is, however, a different product to IF (in that it is not a baby's sole source of nutrition, as is the case for breastmilk or IF for babies aged 0-6 months) and has always been treated differently within the regulatory regime.

143. Advertising FOF can be a useful part of communicating with parents and caregivers and providing them with information about how best to support their baby's needs. There is no basis for the CMA's proposed recommendations to restrict the advertising of FOF. In particular, the Interim Report's suggestion that prohibiting advertising could "*reduce the influence of branding*" is misguided, given the important role that brand equity plays in facilitating competition (as explained further in Section III(b)(iii) of this response).¹²⁶ The Interim Report's suggestion that prohibiting advertising could lead to price decreases is entirely unsubstantiated (and, if accurate, would presumably lead to the CMA pursuing the same approach across products and services supplied to consumers in the UK).¹²⁷

144. More broadly, compliant marketing and advertising are generally seen as useful parts of the competitive process (in that they inform consumers about products and therefore facilitate the process of rivalry between suppliers of different products).

¹²³ Koletzko, B., et al., Prevention of Childhood Obesity: A Position Paper of the Global Federation of International Societies of Paediatric Gastroenterology, Hepatology and Nutrition (FISPGHAN). *J Pediatr Gastroenterol Nutr*, 2020. 70(5): p.702-710.DOI: 10.1097/MPG.0000000000002708.

¹²⁴ Fewtrell, M, World Health Organization (WHO) guideline on the complementary feeding of infants and young children aged 6–23 months 2023: A multisociety response. 2024, p. 4.

¹²⁵ Grammatikaki, E., Wollgast, J., & Caldeira, S, Feeding infants and young children. A compilation of national food-based dietary guidelines and specific products available in the EU market. 2019, pp.22 and 27.

¹²⁶ Interim Report, para. 8.85.

¹²⁷ Interim Report, para. 8.85.



Applying more stringent standards in relation to product claims (as described in Section IV(c)(i) of this response) would achieve the CMA's overarching objectives in a more proportionate and effective way.

iii. Labelling and branding enables consumers to compare brands easily and to make a fully informed choice

145. As outlined in Section III, IF manufacturers compete across a range of price and non-price parameters, such that consumers are offered a range of IF products differentiated by quality, product format and price. Danone UK considers that labelling and branding enables IF manufacturers to explain the specific benefits of their products to consumers (for example, from a nutritional or product safety perspective), which in turn enables consumers to make a fully informed choice. Further, such marketing tools enable consumers to easily and quickly distinguish between IF products produced by different manufacturers, including in a retail setting.

146. Danone UK considers that the current UK regulations requiring manufacturers to ensure a clear packaging distinction between IF and FOF products are appropriate. Danone UK complies with those requirements and would support greater enforcement by the competent authority against any companies who do not.

147. In light of this, Danone UK considers that the CMA's proposals for (i) IF labelling to be standardised,¹²⁸ and (ii) manufacturers to have different brand names and logos for IF and FOF¹²⁹ are ill-founded and may have adverse consequences for consumers.

148. If these proposals were implemented, consumers would not be able to rely on familiar names, logos and labelling to be able to readily differentiate between brands and would lose considerable time and confidence in this process. As explained above (see e.g., Section III(b)(iii)), these effects would be particularly harmful, since (i) consumers' choice is highly driven by trust and brand equity in this market, and (ii) IF manufacturers compete fiercely to earn and maintain consumer trust (which forms a crucial part of their brand equity) which, ultimately, results in safer and higher quality products being brought to market. Further, these measures would also have a chilling effect on investment into quality and safety (given that, as explained above, these investments are, in practice, reflected in a product's brand equity).

iv. Differentiated packaging in healthcare settings enables consumers to make informed choices once they return home

149. As noted above, Danone UK believes that HCPs are an important and trusted source of advice for parents. To improve consumer outcomes in healthcare settings, Danone UK therefore considers that the CMA should focus on ensuring that HCPs are well-equipped to provide consumers with high-quality information. Danone UK strongly disagrees with the CMA's proposal that IF be provided in standardised packaging in such settings.¹³⁰

150. Standardised packaging is unlikely to materially contribute to informed decision-making. On the contrary, this would create anxiety and confusion for parents, who would find it more difficult to differentiate between brands (which would have an adverse impact on consumer choice, given the valuable role played by brand equity).

151. The use of standardised packaging in healthcare settings would also risk confusion after parents leave the hospital setting and need to choose a brand to continue their feeding journey. This would decrease the quality of information available to

¹²⁸ Interim Report, para. 8.74.

¹²⁹ Interim Report, para. 8.69.

¹³⁰ Interim Report, para. 8.25.



parents in relation to which brand to choose (if their baby had settled well with it in the hospital) or avoid (if their baby experienced discomfort with it in the hospital).

152. The introduction of standardised packaging for IF only (in contrast to other products in hospitals) could stigmatise parents who cannot or choose not to breastfeed.¹³¹ So far as Danone UK is aware, the only other consumer products that are required to be supplied in standardised packaging in the UK are cigarettes and hand rolling tobacco, which are products that have a significant adverse impact on public health, and there are no other products provided to patients in hospital in standardised packaging. The risks that would arise from any kind of link being drawn between IF and tobacco products are severe and multiple, and the CMA could not make such a recommendation without a particularly cogent body of underlying evidence to support this measure (which it does not have here).

v. *Hospitals and retailers are best placed to determine how to stock IF products*

153. As explained above, Danone UK considers that a targeted package of measures focused on providing better quality information to parents and caregivers would fulfil the CMA's objective of ensuring that the IF market is working well.

154. In this regard, Danone UK notes that imposing onerous requirements on hospitals and retailers about how they stock products is unnecessary and could cause unintended adverse consequences. Such measures risk imposing additional costs on those suppliers (which would ultimately be passed on to taxpayers and/or customers) and could give rise to supply distortions (which could damage product availability of an essential healthcare product).

155. It is unclear what benefits could be brought about by a mandated "*balanced procurement*" process in healthcare settings.¹³² The NHS is a professional procurement body that already has access to the full market (*i.e.*, a competitive tender process which invites all brands to participate) and makes decisions based on objective criteria (and using its professional judgement). Adding additional requirements to procurement processes risks imposing additional burdens and costs on the NHS. A mandated requirement to keep a wide range of products available in hospitals would also risk supply distortions which would, in turn, risk depriving informed parents of their formula of choice.

156. Danone UK also considers that HCPs should focus on providing nutritional information to parents, rather than being burdened with an obligation to monitor IF prices in order to provide them with pricing information.¹³³ In practice, pricing information changes more frequently than any other type of information relating to IF products, and it would be particularly burdensome, in practice, for HCPs to remain updated on price increases. In any case, consumers are well able to understand pricing information (particularly if feeding guidelines are aligned in order to facilitate like-for-like comparisons). It therefore makes sense to focus the limited bandwidth of HCPs on the information where their specialist input can help improve the quality of information provided to consumers, rather than on pricing.

157. Danone UK also disagrees with the CMA's proposal to set standards for shelf positioning (*e.g.*, for IF to be displayed separately from other formula milk products).¹³⁴ Retailers are best placed to make decisions on shelf positioning to reflect the needs of their customers. As with mandated requirements in relation to hospitals, specific rules on how products should

¹³¹ In its response to the ITC, Feed, the independent infant feeding charity, describes how standardised packaging would equate IF to tobacco, only serving to further stigmatise IF which is a product that most families use and represents safe nutrition to babies ([Feed .pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)).

¹³² Interim Report, para. 8.27.

¹³³ Interim Report, para. 8.21.

¹³⁴ Interim Report, para. 8.39.



be stocked would risk supply distortions (e.g., if retailers operating stores with space constraints were required to have separate shelves for different types of products).

(d) The CMA must ensure that the recommendations do not have the unintended effect of disincentivising innovation and/or product quality standards

158. As noted repeatedly throughout this response (and in Danone UK’s previous submissions to the CMA), innovation and high quality standards are particularly important in the IF market. IF plays a key role in driving positive health outcomes for a vulnerable group of consumers, which is only achieved through innovation and consistent quality standards. Danone UK has invested (and continues to invest) heavily in IF innovation and quality, allowing it to offer products that consistently surpass the minimum compositional requirements set out in legislation and offer additional nutritional/health benefits. The CMA must ensure that any measures adopted as a result of the study do not reduce incentives to maintain high quality standards or to innovate and engage in competition on differentiation. As noted above, Danone UK is concerned that certain of the measures proposed by the CMA (e.g., in relation to limiting product descriptions to “*nutritional sufficiency*”, forced standardisation of IF packaging, and imposing a blackout on highlighting the benefits of FOF) could, in direct opposition to the CMA’s purpose, damage competition in the long run by significantly reducing manufacturers’ incentives to innovate and maintain high quality standards.

(e) Price controls and public provision are unnecessary and excessive responses that would have a negative effect on competition and consumers.

159. Danone UK agrees with the CMA that price controls and public provision (i.e., the “*backstop interventions*” that are considered, but not recommended, in the Interim Report) would have a significant adverse effect on consumers.¹³⁵

160. The Interim Report considers the impact of imposing a maximum price ceiling¹³⁶ and/or a profit margin cap.¹³⁷ These types of price controls could only even hypothetically be justified in markets where: (a) a market-wide upward trend in prices indicated that manufacturers lacked any incentive to compete on price; and/or (b) a genuine lack of product differentiation meant that higher price points could not be justified by higher quality ingredients or the costs of sophisticated, scientific R&D activities, which have resulted in genuine product innovation. Neither of these circumstances applies to the UK IF market (as explained above), in which manufacturers compete intensively on price as well as other parameters, including R&D-driven innovations (which naturally have a bearing on underlying production costs).

161. Given how the IF market actually works in practice, these measures would drastically reduce manufacturers’ incentives to invest in innovation and quality and safety: firms would be discouraged from offering genuine benefits that parents value (achieved through such investment) if there was a fixed price ceiling or a third-party manufacturer that received preferential access to the market. In fact, even if manufacturers continued wanting to offer these benefits, they could lack the ability to do so if they lost competitiveness as a result of these measures. Similarly, price or profit controls could also have an adverse impact on incentives to invest in quality and safety, effectively leading to a “*race to the bottom*” on these critical product parameters. Further, such measures would disincentivise market entry and could even lead to incumbent IF manufacturers exiting the market.

¹³⁵ Interim Report, paras. 8.91 and 8.102. In addition, para. 4.106 of the CMA’s draft “*Markets Remedies Guidance*” (5 November 2024) highlights that “*controlling outcomes*”, such as price caps, are vulnerable to risks relating to specification, circumvention, distortion and compliance can have a negative impact on their effectiveness and cost.

¹³⁶ Interim Report, para. 8.94.

¹³⁷ Interim Report, para. 8.95.



162. The CMA notes that Greece adopted a profit margin cap on IF in 2024. This is a similar measure to a price ceiling, by which companies cannot set their prices higher than a specified percentage above their costs.¹³⁸ Danone UK considers that,

[REDACTED]

The impact of the Greek measure is therefore not reliable evidence of the potential impact of this kind of measure in relation to the UK market.

163. Price controls and public provision would be particularly onerous responses where the competition in the market is working well. In any case, even if the CMA were justified in raising concerns about the state of competition in the market, those concerns can (as explained in detail in this response) be addressed by a range of other more effective and less intrusive measures related to the provision of information.

¹³⁸ Interim Report, para. 8.95.



Appendix I - Analysis of the CMA's Consumer Research Survey

1. As noted above at paragraph 33, the CMA cites the research that it has commissioned from Thinks Insight and Strategy (the *Consumer Research*) in support of several statements on consumer behaviour. As explained below, this approach fails to take proper account of various deficiencies and limitations that are inherent in the research.

(a) The Interim Report does not appropriately recognise the limitations of the Consumer Research

2. The Consumer Research positions itself as “qualitative research” and specifically notes that “language such as most, some, or the majority of consumers relates to the proportion within our [the survey’s] research sample and should not be extrapolated to the broader population”.¹³⁹ The Interim Report, however, ignores this critical caveat entirely and refers to a majority and minority of “consumers”,¹⁴⁰ rather than respondents or participants to the (limited) Consumer Research.
3. This error is significantly compounded when the Interim Report uses the results of this Consumer Research, which are not fit for wider extrapolation, as supporting evidence for many of its findings, particularly in relation to consumer behaviour. For instance, phrases such as “[the survey] also found that most parents...” when describing consumers’ switching behaviour,¹⁴¹ or statements alleging “widespread scepticism of private label”¹⁴² give the false impression that the findings of this Consumer Research apply to a wide population of consumers.
4. The lack of representativeness resulting from the small sample size of the Consumer Research also means that it is not possible to determine the relative weight of the different driving factors of consumer choice. Despite this limitation, the Interim Report relies on the Consumer Research and refers in several instances to certain drivers (e.g., personal recommendation, brand reputation) in consumer choice as being ‘key’ drivers.¹⁴³

(b) The Consumer Research has significant issues in its design

5. While the Consumer Research is positioned as “qualitative research” aimed at exploring “descriptive experiences and perceptions”, this does not mean that the flaws in its design can be ignored (on the basis that it is not quantitative research), particularly because the results of the Consumer Research are often used to support conclusions applying to a wider population of customers.
6. There are important limitations in the design of the Consumer Research, which mean that the results cannot be considered representative or unbiased. For instance:
 - a. The survey sample size consists of 76 consumers only,¹⁴⁴ which is materially below the threshold of a minimum sample size of 100 commonly used by the CMA and set out in its own guidance on good survey design.¹⁴⁵
 - b. The Consumer Research claims to ensure wide representation across a range of age groups, socioeconomic grades, regions of the UK but does not explain how the seemingly arbitrary thresholds chosen in its design are in fact

¹³⁹ Thinks Insight and Strategy (2024), p.4.

¹⁴⁰ See for instance Thinks Insight and Strategy (2024), pp.7, 9 and 23.

¹⁴¹ Interim Report, para. 5.10.

¹⁴² Interim Report, para. 5.28.

¹⁴³ Interim Report, paras. 5.16, 5.18, 5.23.

¹⁴⁴ Thinks Insight and Strategy (2024), p.9.

¹⁴⁵ Para. 2.31, [CMA78](#).

representative.¹⁴⁶ Moreover, the survey does not even attempt to ensure representation across some socio-demographic categories, such as urbanity (*i.e.*, whether the consumers live in an urban or rural area) or ethnicity.¹⁴⁷

- c. The Consumer Research does not explain how participants were recruited. The report’s technical annex does not provide any further information as to how the sample of consumers were identified, approached and requested to participate in the survey.
- d. Participants to the survey were aware that it was being undertaken on behalf of the CMA.¹⁴⁸ The research was conducted between April-June 2024,¹⁴⁹ at a point in time at which participants already had access to a range of information from the CMA’s website, as well as commentary from other news articles/TV slots that gave some insight into the CMA’s existing thinking.
- e. For example, during an interview with Sky News on 29 November 2023, Sarah Cardell, CEO of the CMA, stated that the CMA had seen “*high price increases*” over the last two years, “*very little switching to cheaper options*” and “*very limited availability of own-brand in baby formula*”, which was “*obviously a concern*” for the CMA.¹⁵⁰ On the same day, a news article quoted Sarah Cardell as stating that: “*We’re concerned that parents may not always have the right information to make informed choices and that suppliers may not have strong incentives to offer infant formula at competitive prices*”. Therefore, at the very least, the CMA’s comments to the media prior to the launch of the Consumer Research had the potential to unduly influence the responses of respondents.¹⁵¹
- f. The surveyors followed a “*semi-structured*” approach,¹⁵² leaving considerable discretion to the surveyors in the questions asked. This also implies that not all consumers were necessarily asked the same questions, possibly further reducing the sample size on which the survey team relies to draw out some of their conclusions.
- g. Some questions used in the survey are leading and/or lack neutrality, which as stated in the CMA guidelines¹⁵³ can weaken the evidential value of a survey. For instance:
 - i. One of the questions asks: “*[If not spontaneously mentioned] To what extent, if at all, do you think more expensive brands are of higher quality than less expensive brands? Why? How do you think they might differ in relation to the factors that are important to you*”.¹⁵⁴ This type of question typically triggers a reflection which would not have spontaneously occurred in the actual decision-making process of that consumer.
 - ii. Another question asks “*Could you please tell me how you felt when you first considered using infant formula? I realise this may be a sensitive experience, so please share what you feel comfortable*” (emphasis added).¹⁵⁵ In this question, the surveyor implies that it expects the decision to carry an emotional load.

¹⁴⁶ Thinks Insight and Strategy (2024), p.10.

¹⁴⁷ Thinks Insight and Strategy (2024), Annex 10.3.

¹⁴⁸ Indeed, in the terms of the interview it was noted that, “*The client, the Competition and Markets Authority, may want to attend your interview in observational capacity only*” and the participant was asked whether they consent to this. See Thinks Insight and Strategy (2024), p.53.

¹⁴⁹ Thinks Insight and Strategy (2024), p.9.

¹⁵⁰ [Cost of Living: Families hit hard as baby formula increases in price by 25% | News UK Video News | Sky News.](#)

¹⁵¹ [UK competition watchdog to investigate baby formula market | Food & drink industry | The Guardian.](#)

¹⁵² *Ibid.*

¹⁵³ CMA Guidance: Good practice in the design and presentation of customer survey evidence in merger cases (2018).

¹⁵⁴ Thinks Insight and Strategy (2024), p.79.

¹⁵⁵ Thinks Insight and Strategy (2024), p.84.



- h. The results of the Consumer Research have been directly and significantly affected by the limitations identified above. This means that, to avoid any distortions, for whatever purpose the Consumer Research is considered, these limitations must be properly recognised and addressed.



Appendix II - Danone UK's pricing analysis demonstrates that Danone UK is not a price leader

1. The Interim Report suggests that Danone UK is the “*clear price leader*” in the market and is “*able to set its prices with limited regard for its competitors’ pricing*”. These conclusions are not supported by the underlying evidence, but instead rely on a highly selective and superficial reading of manufacturers’ internal documents, rather than a balanced and in-depth analysis of the data and evidence available to the CMA. Further, as set out in Section II, these unsubstantiated statements do not support (and are not relevant to) the CMA’s provisional recommendations and therefore the CMA does not need to – and should not – include them in its final report.
2. Pricing analysis that incorporates a more comprehensive set of qualitative as well as quantitative evidence shows that neither Danone UK, nor any of its competitors, is a price leader (as that term should be properly understood). Moreover, the market outcomes in the supply of IF are not consistent with those of a market with price leadership.
3. First, the Interim Report fails to properly assess the available evidence in relation to the competitive constraint placed on Danone UK by its competitors’ pricing (which is one of several inputs Danone UK considers in its pricing decisions, along with factors such as [REDACTED]). In particular:
 - a. The Interim Report primarily focuses on the absence of direct references to competitor pricing in a limited set of Danone UK’s pricing documents (which it concludes is evidence of Danone UK having limited regard to its competitors’ pricing). In doing so, the Interim Report ignores the other ways in which Danone UK takes competitor pricing into account, in the ordinary course of business, when setting its own pricing.¹⁵⁶
 - b. In any event, while the CMA’s provisional conclusion seems to be based on an absence of references to specific competitors in the documents in question, even the documents cited by the CMA show [REDACTED].¹⁵⁷
 - c. The CMA is therefore not able to take the position that Danone UK takes commercial decisions with “*limited regard for competitor pricing*” by focusing only on part of the evidence base (which it misconstrues), while ignoring other relevant evidence showing [REDACTED].
 - d. In any case, even at its highest, the evidence cited by the CMA would not support a finding of “price leadership” (as that term should be properly understood). Price leadership occurs when one firm in a market (the leader) sets its price level or price change, and the other firms in the market (the followers) adopt the same or similar price level or price change.¹⁵⁸ In particular, price leadership can only exist where competitors systematically and consistently match their prices or price changes to the price leader. The CMA’s analysis is limited to only two

156

157 For example,

158 See, for example, James Harvey, Price Leadership, Global Dictionary of Competition Law, Concurrences, Art. N° 85414.



players (Nestlé and HiPP) and does not take into account Kendamil and Mamia,¹⁵⁹ in particular, which have been important competitive forces in the market. The fact that Kendamil and Mamia clearly follow different strategies yet are demonstrably competing with and gaining market share from Danone UK's brands, by itself, precludes any suggestion of "price leadership". As explained in Section III, Danone UK's internal documents provide clear evidence of [REDACTED].

4. Second, Danone UK has conducted its own analysis of the pricing data presented in the Interim Report. This shows that Danone UK is not a "clear price leader" in the market, for the reasons set out below.

(a) Methodology: Danone UK has used data included in the CMA's Interim Report for its pricing analysis

5. As part of its pricing analysis, Danone UK has created a dataset containing a times series of prices of the best-selling product format for each manufacturer.
6. Danone UK considers that this data is appropriate for the purposes of responding to the CMA's analysis. However, Danone UK acknowledges that the following caveats apply to the dataset used in the CMA's analysis (and by extension, to the response set out below, which is based on the same data):¹⁶⁰
 - a. The pricing analysis is based on retailer prices rather than manufacturer RRP's. While this may introduce a degree of approximation in the analysis, as retailer price changes may not match RRP's exactly, Danone UK has considered retailer process as a proxy for RRP's on the basis that the CMA has found that the two are likely to follow each other closely and that retailers have typically passed on wholesale price changes.¹⁶¹
 - b. The pricing analysis is based on 800g packs only and it ignores all other pack sizes even where the contents of those packs are identical. As Danone UK does not have access to the CMA's comparable data on prices of other pack sizes for each manufacturer or retailer, it has restricted its pricing analysis to 800g packs only for the purposes of responding to the CMA's analysis.

(b) Conclusion: Danone UK is not a "clear price leader" in the market

7. In a market with a clear price leader, pricing actions of the leader would have a systematic and consistent relationship with pricing responses of its followers. For instance, this may mean that: (i) followers change prices only in response to the leader; or (ii) price changes by the leader evoke a significant reaction by followers; and/or (iii) the leader does not tend to react to price changes by followers.
8. Danone UK's analysis shows that none of these patterns holds in the IF market. On this basis, the CMA's conclusion that Danone UK is a price leader is inconsistent with the available evidence. In particular:
 - a. Price changes by Danone UK's competitors are frequently not preceded by Danone UK's price changes, which indicates that competitors are not systematically following Danone UK's price changes. During the period considered by the CMA (March 2019 to July 2024), Danone UK's competitors have made 24 price changes and in

¹⁵⁹ In relation to constraints posed by Danone UK's pricing, paragraph 7.59 of the Interim Report notes that the CMA "does not have documentary evidence from Kendal".

¹⁶⁰ The pricing analysis conducted by Danone UK may involve some approximation as Danone UK was not granted access to the CMA's data in spreadsheet form and has therefore transcribed data points from Figure 4.3 of the Interim Report.

¹⁶¹ The CMA's Interim Report finds that retail prices have "tended to closely follow RRP's" (see Interim Report, Appendix D, para. D.18).



16 of those cases,^{162 163} there were no changes to Danone UK's prices in the three-month period before the price change by Danone UK's competitor.^{164 165 166}

- b. Evidence does not support an argument that all of Danone UK's price changes evoke price changes from competitors or that Danone UK's price changes evoke a more widespread price change across the market compared to the response evoked by price changes of Danone UK's competitors. In particular:
 - i. There were a total of 15 price changes to Danone UK's brands in the period considered. In four cases, there were no changes to prices of any other brand in the three-month period following Danone UK's price changes. In one other case, a competitor brand changed prices within a three-month period of a price change by a Danone UK brand but in a different direction. This means that in 5 out of 15 cases, a price change by Danone UK does not evoke a corresponding price change from the market.
 - ii. Out of the ten cases when competitors changed prices, only one competitor responded in five cases; two competitors in three other cases; and three competitors in the two remaining cases. In comparison, price changes by competitors such as Kendal and HiPP were followed by more significant changes from the rest of the market in the three-month period following the price change. For instance, at least two competitors changed prices in each of the three price changes made by Kendal's brands¹⁶⁷ and at least three competitors changed prices in three of the four price changes made by HiPP.¹⁶⁸
- c. Moreover, Danone UK can often be seen to have changed its prices shortly after price changes by competitors. Of the price changes made by competitors in the period, Danone UK made a price change within a three-month period following 50% of those changes. In comparison, many other competitors changed prices less often (e.g., Kendamil, which changed prices in less than 20% of cases).

¹⁶² Price changes are recorded using data on monthly average selling prices at the retail level. This means that a single price change at the manufacturer level may be observed over one or more months in the retailer data averaged to monthly frequency because, for instance (i) retailers may choose to make multiple price changes at the retailer level in the period after a price change at the manufacturer level; or (ii) price changes at the retailer level may take time to be fully reflected in the monthly average (e.g., because changes are made after the start of the period over which the average is calculated, which would mean that the average price would be a blend of the old and the new price). Given this context, a price change is identified in two steps – (1) by first identifying the month in which the price change started *i.e.*, this is done by noting changes in average prices from one month to the next; and (2) then identifying the month in which the same price change was fully reflected in the price *i.e.*, this is done by noting the month in which the price reached a point where it stabilised in (at least two) subsequent months. In the absence of more robust data, Danone UK considers this is an appropriate methodology for identifying changes in price (as noting each instance of changes in monthly average retailer prices as a price change would significantly overstate the number of price changes at the manufacturer level).

¹⁶³ The month in which the price change started is recorded as the time of the price change. For example, if average prices are, say: £10 in January, in £10 in February; £10.40 in March; £10.50 in April, May and June – February is recorded as the timing of price change (as this is when the price change started, even though it was only fully reflected by April).

¹⁶⁴ A three-month period is taken as a suitably long period of time for reactive pricing strategies to be observed. The trends on pricing patterns identified by Danone UK are not typically sensitive to the time period considered.

¹⁶⁵ All brands listed in Figure 4.3 of the Interim Report are considered as separate competitors (except Kendamil Classic and Kendamil Classic (900g) which is considered as the same brand).

¹⁶⁶ Price changes by competitors (or Danone UK) that happen in the same month as price changes by Danone UK (or competitors) are not considered as the available data does not make it possible to establish the order in which those price changes occurred.

¹⁶⁷ The three price changes by Kendamil brands evoked price changes by: four competitors in one case; three competitors in one case; and two competitors in another case.

¹⁶⁸ The four price changes by HiPP evoked price changes by: six competitors in one case; four competitors in one case; three competitors in one case; and zero competitors in another case.



Appendix III – Danone UK does not agree with the CMA’s gross margin calculations

1. The CMA’s gross margin calculations are inconsistent with both Danone UK’s internal reporting and the accounting standards under which Danone is required to report, and miss out important elements of revenues and costs which Danone UK considers when assessing its gross margin profitability. As a result, the CMA’s gross margin calculations can be expected to materially differ from and overstate margins relative to, Danone UK’s internal view of its gross margins.¹⁶⁹
2. On that basis, Danone UK notes that the CMA’s use of the term “*gross margin*” is highly misleading. Gross margins typically reflect the difference between a company’s Net Sales (*i.e.*, total revenues after accounting for all discounts, returns, allowances and taxes) and Costs of Goods Sold (**COGS**, *i.e.*, the direct costs of producing the goods sold by a company).¹⁷⁰ Because the CMA leaves out important elements of revenues and costs falling under this definition, Danone UK considers it misleading for the CMA to refer to its calculated metric as “*gross margin*”.
3. Moreover, the CMA’s analysis does not allow for reliable comparisons of gross margins (i) across manufacturers; and/or (ii) over time:
 - a. As recognised by the CMA, both the revenue and cost metrics that the CMA relies on to calculate gross margins are not consistently measured across manufacturers. This affects the comparability of gross margins across manufacturers.
 - b. As gross margins for a given manufacturer are not necessarily measured over time in a consistent manner [REDACTED] any comparison of gross margins over time cannot be relied upon.
4. In any event, the CMA’s reliance on gross margins is inappropriate in the context of the IF market, given that this approach does not recognise many important costs which are critical to the ongoing delivery of Danone’s products and its innovation efforts.

(a) Revenues

5. Danone UK does not recognise the measure of revenue used by the CMA, which does not represent the *actual* revenue Danone UK recognises or ultimately the cashflow it receives from customers for the sale of baby formula, nor does it represent the full scope of revenue (specifically discounts to revenue) which it is required to report and is subjected to audit under the relevant accounting standards.
6. The CMA’s revenue metric (referred to as “*product-specific revenues*”) is calculated based on Danone UK’s invoiced sales amount minus any rebates paid to customers. However, as explained to the CMA, in addition to any rebates paid to customers, Danone UK also provides other forms of customer assistance which it recognises as part of its total measure of revenue in line with the relevant accounting standards (*IFRS*).¹⁷¹ [REDACTED]

¹⁶⁹ [REDACTED]

¹⁷⁰ There is some debate in the accounting literature as to whether Advertising and Promotion (*A&P*) should also be included in the gross margin.

¹⁷¹ See Danone UK’s response to Question 3 of the CMA’s s.174 Notice of 27 June 2024, submitted on 23 July 2024.

[REDACTED]

[REDACTED]

(b) Cost of goods

7. The CMA’s measure of costs (referred to as “*Cost of goods*”) uses a subset of Danone UK’s total COGS, which Danone UK uses to calculate its gross margins.¹⁷²
8. The CMA’s cost of goods metric is restricted to three cost components only: raw material costs, labour costs (specific to production) and packaging costs.¹⁷³ This metric ignores a range of costs which Danone UK considers to be variable in nature and are captured within Danone UK’s COGS. These include:¹⁷⁴

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Further, as explained in more detail below, Danone faces a range of costs (in addition to COGS) which are critical to the ongoing delivery of its products as well as its innovation efforts.¹⁷⁶

(c) The CMA’s definitions of revenues and costs are likely to be inconsistent across manufacturers and over time

10. As the CMA acknowledges, both the revenue and cost metrics that the CMA relies on to calculate gross margins are not consistently measured across manufacturers.¹⁷⁷ For instance, rebates and trade support are not recognised accounting

¹⁷² See Danone UK’s response to Question 11 of the CMA’s s.174 Notice of 27 June 2024, submitted on 23 July 2024.

¹⁷³ Interim Report, Appendix E, para. E.10.

¹⁷⁴ See Danone UK’s response to Question 11 of the CMA’s s.174 Notice of 27 June 2024, submitted on 23 July 2024.

¹⁷⁵ See Danone UK’s response to Question 16 of the CMA’s s.174 Notice of 27 June 2024, submitted on 23 July 2024.

¹⁷⁶ See Danone UK’s response to Question 11 of the CMA’s s.174 Notice of 27 June 2024, submitted on 23 July 2024.

¹⁷⁷ Interim Report, Appendix E, paras. E.5 and E.6.



metrics in their own right and are likely to be recorded differently between manufacturers. Similarly, the CMA recognises that some costs have been allocated to specific products using a degree of judgement.¹⁷⁸

11. In addition, in Danone UK's case [REDACTED]
12. As such, the CMA's revenues and cost metrics may be defined differently both between different manufacturers and over time, affecting both the comparability of gross margins between manufacturers and even for a given manufacturer over longer periods of time.
13. As a result of the CMA's decision to rely on gross margins, the CMA fails to recognise many important costs which are critical both to the ongoing delivery of Danone UK's high-quality products, but also its innovation efforts which aim to contribute to competition and improved consumer outcomes in the future.
14. [REDACTED]

¹⁷⁸ Interim Report, Appendix E, para. E.15.

¹⁷⁹ [REDACTED]