

# Infant formula and follow-on formula market study interim report

## Competition and Markets Authority

### Public Health Wales Consultation Response

#### The market

**1. What is the value derived from follow-on formula for a) parents and babies and b) manufacturers and retailers given that the NHS states that research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to have first infant formula as their main drink until they are 1 year old. CMA analysis has found that follow-on formula is generally priced the same as (or sometimes slightly cheaper than) infant formula.**

a. Public Health Wales (PHW) does not consider that there is any value in follow on formula for parents and babies.

b. Follow on milk provides a lucrative revenue stream to manufacturers and retailers, marketing infant feeding as a journey of stages to be progressed through and exploiting the desire of parents to do the best for their baby. As the CMA have found, follow on formula is similar in cost to first infant formula and is sold to the same customers. Toddler and growing up milks are considerably more expensive than cow's milk and contain large amounts of sugar, making them a less healthy choice and contributing to financial strain for parents who may believe they are necessary (First Steps Nutrition, 2024).

The particular value of follow on formula as a separate product is in the ability circumvent regulations prohibiting marketing of first infant formula (Save the Children, 2018). This is evidenced by the marketing spend discussed in the interim report (ref interim report) and by the similarity of product labels which means that advertising is perceived to relate to first infant formula (Brown et al., 2020).

## **Our provisional analysis and findings**

**2. Do you agree with our provisional analysis of market outcomes, as set out in section 4 of this interim report? Please explain why you do or do not agree, providing evidence to support your response where possible.**

PHW is not in a position to comment on market analysis.

However, it is important to revisit the reasons for investigating this market in the first place; spiralling formula costs and the effect on families and babies in the UK context where most babies are formula fed to some extent (First Steps Nutrition Trust, 2023). PHW considers that any intervention in response should recognise the unique nature of this market and the vulnerability of babies within it (Marcellus, 2017). Public health policy in this area is for the protection of all babies and not only about safeguarding breastfeeding.

PHW is particularly concerned about this issue as Wales has relatively low breastfeeding rates and high levels of deprivation so there is likely to be a high proportion of low income families reliant on infant formula (Abel et al., 2016; Welsh Government, 2024). It is important in designing interventions to recognise the differences in settings between UK countries; e.g. in Wales, formula is currently provided free in all hospital birth settings.

We agree that current legislation does not lead to complete homogeneity between products and that manufacturers are then using this to exploit parents via different methods. We welcome the opportunity for legislation to be strengthened to prevent this from happening in the future.

PHW notes the characteristics of a well functioning market set out at 8.3. While parents are the purchasers in this market, babies are the ultimate consumers of formula and, if not breastfeeding, are entirely reliant on it for their nutrition. For this reason and per World Health Organization the market in infant formula should not be treated in the same way as other markets. A well functioning market for babies should have the effect that all parents, in particular low income families, should be able to access this essential product at a predictably low price. High regulatory barriers to entry into this market are essential for the safety and health of babies.

PHW notes the finding in the interim report that manufacturer margins are particularly high.

**3. Do you agree with our provisional conclusions on the potential drivers of these market outcomes as set out in sections 5, 6, and 7 of this interim report? Please explain why you do or do not agree with regards to the following in particular:**

**a. consumer behaviour (section 5)**

PHW notes that a significant proportion of mothers and families making choices about formula are doing so when they planned to breastfeed (Competition and Markets Authority, 2024). This indicates that the UK environment is not enabling of breastfeeding. This is further borne out by some of the parent experiences discussed

in the qualitative research, which demonstrate a lack of understanding and support for breastfeeding (Thinks Insight and Strategy, 2024). While enabling breastfeeding is not within the remit of the CMA, it is important to acknowledge the role of marketing in undermining breastfeeding. For example, the use of baby clubs to position formula brands as the source of parenting information, and the use of normal baby behaviour to promote formula use, especially formulas classed as foods for special medical purposes (FSMP) (Rollins et al., 2023). Formula as the cultural norm is underscored by the quoted statistic that a fifth of mothers have chosen a brand even before pregnancy (Competition and Markets Authority, 2024).

It is also important to note that consumers are dependent on this market; they cannot choose to purchase an alternative product to feed a baby who is not breastfeeding. PHW considers that it is inappropriate that companies are enabled as they currently are to profit excessively from consumers in this position.

#### **b. the regulatory framework (section 6)**

The current UK regulatory framework is enabling the behaviours of manufacturers identified in the report for the following reasons:

- It is not restrictive enough, in particular in relation to digital marketing and formula marketed as food for special medical purposes (FSMP).
- There is a lack of clarity.
- There is no effective enforcement.

The regulatory framework in the UK is not considered strong in the global context, compared to the globally agreed World Health Organization Code of Marketing of Breastmilk Substitutes, and its subsequent resolutions (World Health Organization, 2024). PHW notes that the lack of regulation on promotion of follow on products has not led to competitive pricing for those products (Competition and Markets Authority, 2024).

PHW considers that the labels of follow on milk displayed in the report demonstrate a lack of enforcement of existing regulations.

#### **c. competition in the market (section 7)**

##### **i. competition between manufacturers/brand**

##### **ii. competition between retailers**

##### **iii. barriers to entry and expansion**

PHW has no specific comments on competition in the market, but notes the successful entry of a new manufacturer, and the lack of price response from others. PHW agrees that companies use claims which are not easily interrogated by consumers to differentiate their products (Conway et al., 2023).

As an essential product for feeding non breastfed babies infant formula must be highly regulated to be the best possible quality; this will inevitably act as a barrier to entry to the market but is necessary.

#### **4. Are there any other factors which we have not addressed in the report which you consider could be contributing to the outcomes we observe?**

Please see response to point (a) above. Formula feeding is culturally normal in the UK, and marketing activity contributes to a challenging environment for maintaining breastfeeding (Perez-Escamilla et al., 2023).

#### **Our provisional views on possible remedies**

**6. Please provide your views on whether the possible remedies we have set out in section 8 would be effective and proportionate in addressing the issues we have identified (on their own or in combination). We also invite views on the specific questions below, noting that stakeholders can refer to the same remedy in response to Question 7 and 8 if they consider the remedy could have both positive and negative impacts.**

#### **Information in healthcare settings**

PHW does not support additional requirements for healthcare settings. All applicable settings should implement Unicef UK Baby Friendly Initiative (BFI) standards and receive appropriate investment to do so. This global, evidence based initiative includes implementation of the WHO Code to protect all babies and ensures that information about safe, appropriate and responsive formula feeding is provided as required.

PHW feels strongly that responsibility for analysing and explaining advertising and marketing messaging and translation into factual information for parents should not lie with the health service; PHW would prefer implementation of restrictive measures on industry to ensure such claims are not made in the first place. PHW also considers that these proposals could have the effect of an increased focus on industry marketing to professionals.

8.18

The NHS in Wales already provides key public health messaging around formula feeding in various contexts:

- Provision of evidence based information about formula feeding forms part of the Unicef Baby Friendly Initiative (BFI) standards, which all units in Wales are expected to achieve (Unicef UK, 2017)
- First Steps Nutrition provide significant detailed information for parents and professionals, and NHS services signpost to it as an independent source of information (First Steps Nutrition Trust, n.d.).
- PHW has developed public health messaging on formula feeding which has been shared through social media channels.
- Every Child Wales resources include this information (NHS Wales, 2024).

Marketing of brands is well funded, pervasive and influential, overpowering public health messaging (Rollins et al., 2023).

The key decision point for mothers choosing a formula brand in hospital is likely to be bedside in the labour or postnatal ward. Staff are unlikely to be equipped or resourced to offer an assessment of claims made by manufacturers on packaging or to share information about costs. PHW does not support this recommendation.

8.19 and 8.20

NHS professionals should already be communicating the key public health messages described. As noted in the interim report, they are doubted by consumers due to powerful branding messages (Thinks Insight and Strategy, 2024). There is also evidence that most parents making brand decision do not consult a health professional (Brown et al., 2020).

8.21

PHW does not consider that it is practical or desirable for HCPs to communicate information about price. It is likely to lead to breaches of UK Regulations and the WHO Code thereby undermining the policy objective. It could also be counter productive, raising awareness of premium brands which evidence shows parents can believe are superior.

If a pricing information portal was progressed, it should be hosted by an independent source such as First Steps Nutrition. It should not display any branding and should provide comparable costs e.g. per 100ml as made up.

### **Supply in healthcare settings**

8.25

PHW strongly supports standardised, unbranded packaging for formula in healthcare settings. This would reinforce the message that formulas are nutritionally equivalent and reduce the impact of branding at a vulnerable time. PHW notes that procurement pathways may differ between the UK nations and this should be considered in the formation of the recommendations.

There is an additional opportunity for impact around sustainability, as formula is currently supplied to maternity units in 70ml single use plastic bottles. The volume is inappropriate for newborns and contributes to plastic waste.

8.27

PHW does not agree that healthcare settings should carry a wider range of brands for the following reasons.

- This would contravene BFI guidance and lead to maternity services acting as a shop window for brands; it could also encourage companies to target more marketing to health professionals.

- There is evidence that 'premiumisation' has no benefits for babies and is solely a marketing strategy (Changing Markets Foundation, 2019). Offering a wider choice of brands could lead parents to choose the premium brands if free of charge in hospital or to choose the one they are aware of, reinforcing brand loyalty.
- PHW notes the interim report finding that parents seek shortcuts in decision making; it is likely that in the context of a postnatal ward with a baby urgently needing to be fed a wide range of products would be overwhelming (Competition and Markets Authority, 2024).
- This intervention would also continue to disadvantage own label manufacturers who offer the lowest cost products, as they do not offer ready to feed (RTF) formulations.

Rotation of brands is permissible under BFI standards, but does not remove the impact of brand visibility in healthcare settings and the associated halo effect.

### 8.35

PHW would support a requirement for retailers to provide information about nutritional equivalence of formula at point of sale. This would ensure that this important public health message is available to parents at a key decision making point. Information about the safety of switching between brands could also be included. PHW notes that the observed reluctance to switch between brands means that parents may not take advantage of increased price competition.

### 8.36

PHW would support this information being required on packaging for the same reasons.

### 8.37

PHW is unsure about the feasibility of an up to date resource interrogating formula claims. It is unclear who is responsible for the creation and maintenance of the resource and again passes the responsibility from the manufacturers and retailers profiting from such claims.

Such an intervention is also likely to be impractical; PHW considers it unlikely that parents will scan a QR code and read this information in the supermarket. There are also concerns about digital exclusion, meaning that those most in need of the information may not access it.

### 8.38

PHW would support a requirement for retailers to provide information about follow on formula being unnecessary at point of sale for the same reasons noted in 8.35.

### 8.39

PHW would support separation of follow on and infant formula to reduce opportunities for cross promotion.

#### 8.45

PHW does not consider that it would be appropriate to allow retailers to publicise price reductions for the following reasons:

- It would amount to promotion and would undermine the UK legislation and the limited UK alignment with the WHO Code, the purpose of which is the protection of all babies, however they are fed.
- It would not be effective- as noted in the report this is permitted already for follow on milk and has had a limited effect on price (Competition and Markets Authority, 2024). It would rely on an uncertain market response to lower prices.
- It would have unintended consequences- short term price reductions could incentivise parents to choose a brand that they pay more for in the long term, or to try formula with consequential effects on breastfeeding.
- It would most benefit those consumers who are best able to take advantage of a range of retailers and not those most in need of lower priced infant formula.
- It would undermine the other recommendations advocating more restriction around formula marketing, limiting their effect.

#### 8.53

PHW is supportive of measures to clarify definitions around advertising and would support a wide definition prohibiting all promotion of breastmilk substitutes per the WHO Code. It is important to note in drafting that formula companies are much better positioned to react quickly to developments e.g. digital marketing, which can limit the effect of tightly drafted regulations (World Health Organization, 2022b). It is suggested that implementation of the WHO guidance on regulation of digital marketing would be effective in this space (World Health Organization, 2022b).

#### 8.61

PHW would support a requirement for prior approval of formula product labels to support compliance with current regulations.

#### 8.69 and 8.74

PHW would support the requirement for differentiated branding for infant formula and rebranding on infant formula. This would reduce the cross promotion which has been identified in evidence and acknowledged in the interim report, and reduce the power of existing brand awareness and loyalty. For the same reasons PHW would support standardised packaging for infant formula.

#### 8.78

PHW would support tighter regulation of statements on packaging to reduce the impact of unverifiable claims identified in the report. PHW would support strict regulation meaning that mandatory statements only could be included on packaging. This would have the advantage of clarity for enforcement purposes.

Evidence demonstrates that the claims used by formula companies are utilised to promote brand relationships, and as such can be deliberately vague and difficult to assess. In a market where products are so highly regulated as to be similar in reality, they give a misleading impression of superiority (Hastings et al., 2020).

8.85

PHW would strongly support prohibition of all brand related advertising relating for breastmilk substitutes per WHO recommendations and would support the inclusion of adjacent products. This may have additional public health impacts as packaged baby and toddler foods are often expensive and unhealthy (Crawley & Westland, 2017; Public Health England, 2019).

8.91

PHW would support price capping/ profit capping as a means of maintaining equitable access to low prices for those families most in need. This would apply across retailers, without amplifying brand information, and ensure that rapid price rises do not have to be borne by families in need at short notice.

**7. Which of the possible remedies (on their own or in combination) set out in section 8 are likely to have the biggest impact on improving outcomes for parents who need or choose to use infant formula? Please explain why, including which of the following outcomes you think would be affected:**

**a. price**

**b. product differentiation and/or**

**c. choice**

**d. other (please specify)**

PHW agrees that isolated measures are unlikely to have the desired impact on this market and considers that a package of measures would be more effective. PHW is unaware of any evidence of effectiveness for these measures in isolation.

The WHO Code (and subsequent resolutions) is an example of a package of measures with evidence of impact and PHW would strongly support its implementation into UK law (Alive & Thrive, 2021).

**8. Are any of the possible remedies set out in section 8 likely to have an adverse effect on the following outcomes for parents in this market? If so, please explain why.**

**a. price**

**b. product differentiation and/or**

**c. choice**



**d. other (please specify)**

PHW does not support recommendations requiring healthcare professionals and services to provide information counteracting claims of formula companies. PHW notes that these options are transferring responsibility from the industry to the publicly funded healthcare.

PHW considers that encouraging or requiring a wider range of formula in maternity wards is likely to increase brand visibility. PHW is concerned that parents may choose premium brands when offered a choice for free and may continue in the long term.

PHW is concerned that requiring amplification for public health messages without reducing other messaging may limit effectiveness, and place responsibility for resolving this issue on public services with limited resources.

PHW considers that allowing price reductions to be publicised may have the effect of increasing visibility of branding and therefore dilute other measures.

**9. Do you consider that revising the regulations to ensure that manufacturers and retailers are permitted to publicise**

**(i) prices and**

**(ii) price reductions (section 8) is likely to induce the use of infant formula? If yes, please explain to what extent you consider this is likely to occur and any possible mitigations.**

PHW does not support this recommendation for the reasons outlined above, and considers that promotion of any kind would be designed to induce purchase of the relevant product. Short term price promotions may attract buyers but are unlikely to support a stable supply of formula for families who need it. PHW understands that the desired impact is for longer term price reductions; however, it is not known how industry will react and this does not provide certainty for families and babies in need of predictable low prices.

**10. Are any of the possible remedies set out in section 8, likely to have an adverse effect on outcomes or unintended consequences for businesses or any other stakeholders in this market? If so, please explain what these outcomes are and why they may arise.**

Because of the unique nature of this market, the interests of babies are paramount and should outweigh considerations for business.

**11. Are there any other possible remedy options which are not outlined in section 8 which we should consider? If so, please outline how the option would work and its**

**likely impact on market outcomes (such as price, product differentiation and/or choice).**

Enacting the WHO Code and subsequent resolutions into UK law would have the effect of strengthening restrictions and enforcement as many of the proposed measures aim to do, without potential loopholes. A model law exists and could be adopted (World Health Organization, 2022a). The WHO Code has been globally agreed for the protection of all babies and to ensure that infant feeding decisions are fully informed by evidence based information and would also prevent marketing to professionals, which is not covered in these recommendations.

The interim report does not address enforcement. Weaknesses in the existing system have been identified but it is not clear how effective enforcement will be established. It can be clearly seen by the labelling of follow on milk that companies will not adhere voluntarily to regulations. It is vital that tighter regulation of this market is accompanied by effective enforcement action.

The recommendations do not address specifically formulas marketed as FSMPs. PHW considers that these should be available only on prescription as there is evidence that the specific marketing of them capitalises on aspects of normal newborn behaviour which may cause parents concern (Rollins et al., 2023).

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