Infant Formula and Follow on Formula Market Study

Children's Food Campaign & Sustain response to Competition and Markets Authority Interim Report, November 2024

Sustain campaigns for a healthy and sustainable food system. Our alliance comprises more than 110 national and local organisations. Our Children's Food Campaign brings together public health groups, children's charities and infant and early years nutrition specialists to help create a healthy environment for children to grow and develop, and ensure parents are empowered in providing healthy and nutritious food.

We welcome this interim report on the market study by the Competitions and Markets Authority (CMA), exploring the unjustifiably high prices and marketing of infant formula and follow on formula. We note the contributions of a number of our member organisations including Baby Milk Action/IBFAN, the First Steps Nutrition Trust (and Baby Feeding Law Group), the Food Foundation, and others into earlier stages of this process.

We appreciate the opportunity to comment on the proposals in the interim report, ahead of final decisions by the CMA in February 2025. We also support the more detailed analysis and new responses provided by the Baby Feeding Law Group.

General remarks – Government's priority to protect infant health & nutrition

In responding to the proposed measures, we note the tension between the dual objectives of the UK government and the NHS to promote infant nutrition, including safe breastfeeding or use of infant formula, on the one hand; and on the other hand the remit of the CMA to "help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour". We welcome the core findings that the market is not currently functioning in relation to delivering fair prices for consumers or ensuring sufficient differentiation between infant formula and commercial follow-on products.

Infant formula is unique in comparison to the wider food and drink market in terms of its essential role in feeding infants under 12 months, as an alternative or complement to breastfeeding. For babies up to 6 months, it is the only nutritional alternative to breastfeeding. For these reasons, it is both tightly regulated in terms of its composition, and governments are also asked to regulate marketing practices in line with the WHO International Code on Marketing of Breast Milk Substitutes and subsequent WHA resolutions. The NHS Start for Life website advises parents that "All infant formulas will meet your baby's nutritional needs regardless of brand or price", with similar messaging on government websites in Scotland, Wales and Northern Ireland. Therefore normal market practices should not be seen as the norm for infant formula.

We support the CMA's statement that it wants "our final recommendations to drive better outcomes for parents, without compromising the compositional standards and safety of infant formula and follow-on formula, or undermining governments' wider policy objectives for this market, including not discouraging breastfeeding".

We believe that these principles must apply in consideration of all measures being proposed by the CMA. The health of infants, of pregnant and breastfeeding women, especially those from lowest income and highest deprivation backgrounds, must be paramount – the ability of manufacturers to compete and succeed in the market is important, but profit and market expansion must not be put before infant health.

Recognising both the extremely low breastfeeding rates in the UK[1], and the well documented aggressive marketing tactics of the commercial formula industry[2], there must be absolutely no trade off in relation to the well-evidenced WHO International Code of Marketing of Breastmilk Substitutes (and subsequent World Health assembly resolutions updating this), which should act as a reference framework for any new policy intervention in the UK. The preamble to the Code is very clear that "*the marketing of breast-milk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products".*[3]

In contrast to any measures that CMA has flagged as being possible "trade-offs" for these protections from marketing of formula, **the Government should consider how to ensure the Code and associated WHA resolutions are more comprehensively enshrined in UK policy and legislation**. Where risks of negative impacts on breastfeeding promotion are identified, the government might also consider use of the precautionary principle so as to prioritise the adequate protection of infant and maternal health[4].

1. Information and supply in healthcare settings

We note the findings of the report regarding the power of word of mouth, personal recommendation in relation to choice of infant formula. The presence of specific brands in healthcare settings can inadvertently be interpreted by a parent as a recommendation, and potentially undermine the core message that all products meet the same nutritional composition standards.

- **We welcome recommendations (8.18, 8.19) to ensure clear, prominent use of the NHS message that it doesn't matter which brand you use, in any healthcare context** – from information provided to staff training - where infant formula is being mentioned as part of support given to parents pre- or post-birth. We strongly support measures to ensure healthcare professionals are

[1] https://www.gov.uk/government/statistics/breastfeeding-at-6-to-8-weeks-after-birth-annual-data-april-2023-to-march-2024/breastfeeding-at-6-to-8-weeks-2023-to-2024-statistical-commentary
[2] https://www.who.int/news/item/22-02-2022-more-than-half-of-parents-and-pregnant-women-exposed-to-aggressive-formula-milk-marketing-who-unicef
[3] https://www.unicef.org.uk/babyfriendly/baby-friendly-resources/international-code-marketing-breastmilk-substitutes-resources/the-code/
[4] https://www.gov.uk/government/publications/rpc-guidance-using-the-precautionary-principle-january-2020

given proper support, access to resources and advice on the official guidance and an approved form of language to use. Likewise, it is critical that at the same time, there is more coverage given to the UNICEF Baby Friendly Initiative accreditation across different settings, beyond maternity units, for example to neonatal units, health visiting services, workplaces, communities, child centres. This would also help to support availability of independent, evidence-based information on formula and formula feeding to parents and support for health care providers.

- **We also welcome inclusion of agreed messaging in healthcare settings that use of follow on formula is optional (8.20).** As with the point above, it is important that agreed forms of language to be used in relation to this are approved by the NHS.
- **However it is not appropriate for healthcare settings to provide information on the ranges, brand names or the prices of any brands (8.21),** as this risks creating a loophole that could be exploited by marketing actors, and could imply NHS endorsement of infant formula products. It would place a significant burden on the NHS to maintain an up-to-date portal that is simply not necessary, and risks unintended negative impact of further promoting brand names. People should not be encouraged to look up the prices of any commercial product on the NHS website.
- **We welcome the proposal (8.25) to consider procuring infant formula in plain or standardised packaging for any products used in NHS healthcare settings,** which would reinforce the message with both parents and healthcare professionals about brand and price being irrelevant to nutritional composition. Our member organisation the First Steps Nutrition Trust has previously made a proposal for a model plain label for the NHS supply chain, which might provide a starting point for agreeing how this could be taken forward. **We believe this is a stronger solution than a balanced procurement of brands option (8.27) which would be challenging to implement in practice and not achieve the same effect**.
- The CMA correctly identifies the supply of branded products into healthcare settings as a means by which infant formula manufacturers can build brand awareness and future loyalty – effectively it is a form of marketing. Whilst we understand why manufacturers may not be incentivised to supply the NHS to the same degree, we still believe public procurement and private label manufacturing is an important market for any commercial company. Managed smartly, it could be a powerful tool for market change.
- In line with a desire to also increase price competition via new market entrants, the CMA and NHS could consider whether a shift to standardised packaging of formula for healthcare settings could be accompanied with procurement frameworks designed to provide more opportunities for SME brands and a wide range of actors, noting that it would also not require the marketing budgets associated with launching brands in major supermarkets and online sales platforms.

2. Information and price promotion in retail settings

We agree with the CMA's statement that parents would be more supported in decision making on infant formula, and be more confident that cheaper products meet the same strict nutritional standards, if they had clear, accurate and impartial information on this topic in retail settings (8.35) – especially if this is in the form of clearly approved NHS wording.

- **We welcome the proposal that manufacturers could be asked to place a standard form of wording prominently on the packaging of infant formula products (8.36)**. This would be the strongest way to ensure every purchaser of formula has the opportunity to read NHS approved language about all brands meeting nutritional standards.
- Should an on-pack recommendation be accepted, there will need to be a window of time to allow redesign, and for old packaging to sell through and new packaging to be implemented. Therefore **we also support the proposal that on-shelf signage could also be implemented by retailers in partnership with the NHS and an agreed form of wording in line with the WHO Code**, plus clear information for each product displayed on the shelf eg price per 100ml as made up to enable full comparison across brands and types of formula (8.35, 8.37).
- **We strongly agree that first stage infant formula should be displayed on retail shelves separately from other follow-on formula products (8.39, 8.40),** and be more prominent than the latter (although not given huge prominence as a whole). We agree that this would help parents both to differentiate and to compare, as well as allow appropriate on-shelf messaging. At present manufacturers line up their similarly branded products together to deliberately mislead parents into continuing into a longer formula journey, despite NHS guidance that there is no benefit to use of follow on products, and that from 12 months children can be weaned onto regular cow's milk or unsweetened plant-based alternatives. We welcome the proposal to add on-shelf messaging to parents 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*". (8.38)
- **We very strongly disagree with the proposal (8.45) to amend regulations to allow manufacturers or retailers to publicise price reductions or promotions of infant formula or follow on products**. Price reductions and special offers are one of the main levers for the advertising and marketing for any brand – advertising a price reduction for a product is the same as advertising that product. Therefore this would absolutely contravene the WHO Code as it would reintroduce the marketing of infant formula. The Code states that "*usual marketing practices are unsuitable for breastmilk substitutes because of the vulnerability of the infants they are aimed at*". We wish to emphasise that this is not just about safeguarding breastfeeding, but also ensuring safe/appropriate formula feeding. As noted in the CMA market report, the first year of a child's

life is a highly sensitive and vulnerable time for parents trying to make decisions, and there are multiple barriers for women wanting to maintain breastfeeding, as seen in the sharp drop off rates in the UK, so the added introduction of promoting financial incentives to purchase infant formula could be very damaging. There is a strong body of evidence that price promotions have an effect on increasing purchasing of food and drink more generally, and weakening the Code's provisions on promotion could unduly influence decision making, including weaning children off breastmilk sooner than planned, or encouraging families to move from first stage infant formula to follow on formula earlier than 6 months if such price promotions were applied to those products. Parents may be encouraged into switching to formula feeding on the back of special offers making products feel better value, only for prices to subsequently rise again when offers expire, making purchase less affordable again. We would also be concerned about setting up a perverse incentive amongst manufacturers and retailers to temporarily manipulate prices upwards in order to create the illusion of price cuts in order to take advantage of being able to promote products**.** Therefore we consider this especially a dangerous and risky proposition when thinking about families on very low incomes. Furthermore, price promotions are also used by retailers to encourage consumers to 'shop around' for the best deals, however people on very low incomes often lack resources and transportation to take advantage of such activity.

- A clear, independent and robust health impact assessment must provide irrefutable evidence that using any form of competition between brands and retailers over pricing would NOT negatively impact on infant feeding practices, covering both breastfeeding and safe use of infant formula in line with nutritional guidance. Even in this case, we believe that product prices or changes in prices and volumes should only be communicated on shelf or directly as part of product listing, at the point of purchase, and not through any other channel.
- **We urge the CMA to remove this proposal from its final report.**

3. Clarifying, monitoring and enforcing the existing regulations

We are pleased that the CMA has highlighted a number of areas where manufacturers appear to be managing to get around existing regulations, and the tightening of enforcement around this.

- **We welcome the CMA's identification of issues associated with ensuring clear definitions of what constitutes advertising**, especially in the online space and results from search engines to generic terms such as 'baby milk', with the purpose of aiding tighter enforcement of regulations (8.50-8.54). We note

that the DHSC Guidance Notes for Regulation 2016/127 has an Appendix 2[5] containing examples of "*the means by which a 'representation' of information could be considered to be within the context of advertising*". However, if other stakeholders including DHSC itself agree that further clarification would aid compliance and enforcement, we would welcome it.

- **We strongly agree with the proposal to enhance the competent authority role with regard to placing new infant formula products on the market**, including moving from a system of pre-notification only, to providing an adequate window for approval and pre-authorisation of new products or product packaging prior to those products being put on the market (8.55-8.63). Given the critical importance of these products for infant health, this seems wholly rational, proportionate and necessary.
- Any pre-authorisation must ensure the clarity of labelling and use of official language and guidance, and differentiation of products as per other recommendations arising from the market study.
- We support the detailed recommendations around enforcement in the response from First Steps Nutrition Trust and Baby Feeding Law Group.

4. Strengthening labelling and advertising rules

We are pleased to see the CMA recognise the role that brand building plays not just in influencing consumer decisions but also in the ability of brands to charge premium prices. We note that the CMA believes that intervening in this area of labelling and advertising could have a meaningful effect on pricing by encouraging people *"to consider buying cheaper brands, have confidence to purchase cheaper formula options, and ultimately increase downwards pressure on prices*".

We believe that introducing the standardised labelling in healthcare settings as proposed earlier in the document (8.25) will play an important role in encouraging parents to try different brands, rather than continue with the one they are first introduced to, and to choose cheaper options when available.

- **We strongly support the proposal to entirely differentiate the product labelling and brand names for infant formula from any other follow-on formulas (8.69) – and this should include so-called toddler or growing up milks.** Whilst current legislation and DHSC guidance is that there should be differentiation between infant formula and follow on formula, as the CMA has noted, there is a huge lack of compliance or genuine differentiation in the market place. We agree that enforcement of this is now necessary, given the expansion of markets of follow-on formulas and growing up milks (GUMs). It would help put an end to the confusion created by similar branding which is extremely misleading and exploitative for parents, whilst many of the follow-on

[5] https://www.gov.uk/government/publications/infant-and-follow-on-formula-and-food-for-special-medical-purposes/commission-delegated-regulation-eu-2016127-supplementing-regulation-eu-no-6092013-guidance#appendix-2-advertising

formula and growing up milk products contain very high levels of free sugars. Forcing these to be entirely different brands, and separated from infant formula in retail environments will provide much more clarity and allow proper scrutiny of these products.

- We welcome the detail regarding the need for differentiation of colours, fonts, graphics on packs to ensure follow on products are genuinely distinct. **With regard to images of 'animal X' (8.71) we strongly oppose the use of child-friendly animal images or cartoons on any of these products,** and if new labelling regulations are being developed we would recommend that it includes prohibition of such images and cartoon mascots on packaging.
- **We welcome the idea of standardising infant formula labelling altogether (8.74).** Our parent manifesto for children's healthy food, devised via research with 2000 parents and with our panel of parent ambassadors, ensuring "honest and trustworthy information on product packaging" is one of the five key pillars of what parents would like to see change[6]. Our polling revealed that parents pay similar levels of attention to company's own health claims as they do to the official nutritional information: 50% trust company messages, compared to 55% trust in the nutritional information. 8 in 10 parents (79%) want the Government to improve nutritional information and labelling of products for children[7].
- **We also welcome the recommendation to tighten the additional messaging allowed to be used and prohibit the use of messaging that parents find difficult to meaningfully assess (8.78**). New rules should apply both to infant formula but also these restrictions should also apply to follow on products and growing up milks.
- We acknowledge the potential concern that such radical changes to the labelling and packaging of infant formula might carry risk of additional stigma associated with formula feeding (8.81). **We would support additional research including lived experience and public health expertise involved in co-design of solutions so that changes could be introduced in ways that would not increase stigma** and that parents would welcome and appreciate in the long term. We hope such 'trade-offs' might thereby be mitigated and avoided.
- **We strongly welcome any proposal to expand advertising and marketing restrictions that currently apply to infant formula to include follow on formula and other toddler/growing up milks (8.85).** We agree that this should not just relate to the products but also to the brands as a whole, otherwise it remains a loophole for manufacturers to exploit with brand name advertising designed to create emotional resonance with products under that brand. Given the sensitivity of these early years for infant nutrition, it makes sense to cover not just the first 6 months of a child's life but provide protection during the first 1000 days as a minimum. Removing the incentive to create brand-building marketing campaigns would also take a cost centre out of the supply chain. It would require brands to adopt alternative B2B techniques (more akin to private

[6] https://www.sustainweb.org/news/apr24-parents-manifesto/
[7] https://www.sustainweb.org/assets/cfc-parent-polling-report-1713789519.pdf

label or procurement practices) to build sales. We note the CMA's comment that it could even "*help to create a more level playing field by reducing (or perhaps eliminating altogether) the importance of making investments in marketing as a way of attracting customers*." (8.87)

5. Backstop Measures: price control and public provision

We note the CMA's concern that the measures previously suggested may not have the effect of directly reducing prices, and more direct interventions may be needed.

Price Controls

- **We welcome the CMA's consideration of the potential use of regulations which set a maximum price or a profit margin cap (8.71).** We note that the CMA does not expect this to form part of the final report, but believe that this idea warrants further investigation and modelling, rather than simply being kept as a backstop, to identify how each model might be applied in practice, and the merits of these approaches. Given the infant formula market is unique and different to other products, and represents and essential product for infant feeding, a price or profit margin cap would provide a unique and powerful alternative mechanism for ensuring prices are fair for families choosing infant formula feeding.
- We note in the CMA report that Greece has introduced a profit margin cap of 7% in 2024, and that the Greek press reported that this immediately triggered a drop in prices of formula in that market[8]. As it is a relatively new policy it is too early to see whether such price reductions continue, but we also note that the Greek government has actively enforced the new regulations, including fines for companies that breach the rules. We strongly encourage the CMA to engage with any other jurisdiction that has introduced similar measures.
- We note the CMA's concern that there is a risk that imposing a price cap may disincentivise manufacturers and possibly result in some actors withdrawing from the market (8.96). No doubt this argument is likely to be deployed by the industry itself as part of the case against any further regulation of their market. The fact is that infant formula will remain a significant and important market for sale of an essential product used by millions of families, so independent evidence that this risk is material should be presented by the CMA/Government on this point.
- However **we disagree that should a price cap or profit margin cap be applied that retailers and manufacturers should additionally be encouraged to compete by publicising price reductions and prices** of infant formula products, **as mentioned in 8.98** As per our comments in section 2, this would constitute a major breach of the WHO Code by allowing marketing activities to

[8] https://www.ekathimerini.com/economy/1233065/price-cuts-have-taken-effect/

take place, and open up serious risk of abuse by the industry. **We urge the CMA to remove this suggestion from its final report.**
- As a minimum the CMA should keep the option of price caps or profit margin caps open, and actively pursue further study and investigation.

Public Provision

We note the CMA's consideration of other means of providing infant formula to the public via a publicly provided independent or NHS brand.

- Overall **we agree with the CMA that the proposal in 8.101-105 should remain a last resort backstop option, and should not be included in the final report**.
- Whilst we can see the potential advantage from a marketing and bulk purchased low cost option, we do not feel that this is the next step that should be taken in the regulation of the infant formula market, and other measures should be considered ahead of this one. The NHS is under significant financial and logistical pressure and the risks and logistics involved in entering a commercial market in this way should not be underestimated.
- We also have some concerns about proposals to market infant formula under the NHS brand, as this might have the unintended negative effect of further encouraging families to consider formula feeding over breastfeeding, or earlier weaning onto formula products.
- We do support this unbranded idea being enacted within healthcare settings themselves, as suggested in 8.25, so that NHS advice is not confused with marketing of specific brands, but we agree with the CMA that taking this further into retail settings for the general public is a step too far at this stage.

6. **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).**

One important Government mechanism that supports very low income parents of babies is the **Healthy Start scheme** applying to pregnant women and families with babies and children up to the age of 4. This allows for purchase of healthy fruit and vegetables, milk or infant formula, as well as providing access to vitamins. The value of government spending on Healthy Start in 2022/3 was £78.7 million, however uptake levels remain below target, with a need to optimise value and uptake amongst families in need[9].

- We would like to encourage the CMA to work with DHSC **to ensure nutritional safety net mechanism Healthy Start provides a value of weekly payments sufficient to purchase infant formula, should families choose to feed their infants this way.** Such a measure would not necessarily have a direct impact on

[9] https://commonslibrary.parliament.uk/research-briefings/cdp-2024-0106/

changing prices, but could serve to ensure the value of this government scheme is applied appropriately in relation to the market overall.

- As recommended by the National Food Strategy, we believe that the threshold for eligibility for the Healthy Start programme should be raised to reach all pregnant women and families with babies and toddlers in receipt of Universal Credit, and that uptake for Healthy Start would be improved by enabling auto-registration of eligible families. We welcome the current Government consultation on expanding permanent eligibility to more families living under the No Recourse to Public Funds immigration condition.
- Whilst such measures lie outside the CMA's direct remit, we hope that this market study and the final report can note the need for government nutritional safety nets to support safe access to, and use of infant formula.

For more information, contact:

[redacted]