Response to CMA Interim Report

We welcome the CMA’s investigation into the high prices that families are paying for infant formula, and the innovative lines of enquiry and recommendations proposed

Infant formula is an essential food for those babies under one year who are not breastfed, or who are mixed fed. In some ways it is more similar to a medication required for health, than to a foodstuff chosen for personal preference.

The World Health Organisation makes it clear that usual marketing practices are unsuitable for products that replace breastfeeding (formula milks up to three years of age (WHA, 2016), baby foods especially under six months, bottles and teats (WHO,1981ff)):

> ‘ in view of the vulnerability of infants in the early months of life and the risks involved in inappropriate feeding practices, including the unnecessary and improper use of breast-milk substitutes, the marketing of breast-milk substitutes requires special treatment, and makes usual marketing practices unsuitable for these products’

The WHO *Code of Marketing of Breastmilk Substitutes,* the subsequent relevant WHA *Resolutions*, and the UNICEF Baby Friendly Initiative are all aimed at protecting lalll babies, no mater how they are fed. They all recognise that there are legitimate reasons for formula feeding, and that there is a legitimate market in the sale of formula and infant feeding products such as bottles and teats. However, families should be able to make well informed feeding decisions, and infants and their families should be protected from commercial influence. Information should be free of conflicts of interest, provided by trained health workers and government bodies, not via advertising or product promotions.

The UN Committee on the Rights of the Child have repeatedly recommended the full implementation of the Code and WHA Resolutions in the UK, to protect the health of all infants and young children (UNCRC, 2023).

We would urge the CMA to recognise the unique nature of infant formulas and the particular vulnerability of their end consumer, the baby. These products require different regulation than other food products; lessons could be taken from the regulations governing the marketing and pricing of prescription and over the counter drugs in the UK. These products are necessary for certain medical conditions; some require medical prescription, and some are available over the counter. Pharmaceutical companies are able to prosper, while consumers are protected from high prices on essential products.

The market alone is not sufficient to provide safe and sufficient access to necessary drugs, and the same is true for infant formula.

We call on the CMA to work collaboratively with government bodies responsible for health, nutrition, and public health, in order to ensure that all measures are joined up, to avoid loopholes and reduce the risk of unintended consequences.

UN Committee on the Rights of the Child. (2023) *Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland : Committee on the Rights of the Child.* https://digitallibrary.un.org/record/4013807?ln=en

World Health Assembly. (2016). *Maternal, infant and young child nutrition: guidance on ending the inappropriate promotion of foods for infants and young children: report by the Secretariat*. World Health Organization. https://iris.who.int/handle/10665/252656

World Health Organization. (1981ff). *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant WHA *Resolutions*. https://www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems/code-and-subsequent-resolutions

Questions

The market

1. What is the value derived from follow-on formula for

a) parents and babies and

The 'value' of follow-on formula (FOF) for parents and babies is negative.

Follow on formulas and all formulas beyond the first stage formula are not necessary products, they are not recommended by the NHS, and they have no proven benefit for infant health. Widespread advertising of FOF, with misleading health claims and cross promotion, contribute to parents paying over the odds for products that their babies don't need. Manufacturers have capitalised on the category of FOF to create other products and 'stages' such as 'Growing up Milks' (GUM). Again, there is no evidence that these products are needed, and in fact the evidence shows that they often add significant amounts of sugar to infant diets (see below).

The value of follow-on formula for manufacturers and retailers is that companies are permitted to advertise it. By using cross promotion, companies are able to imply that the unproven, intangible and unverifiable claims made for follow on products also apply to their first stage formula.

In addition, because follow on formula is not recommended by the NHS, as it is not needed for infant health and nutrition, and it is much more expensive than ordinary cows milk (recommended from 12 months), the product provides an entirely manufactured category of profits for manufacturers and retailers.

'Growing up milks' mentioned in 4.13 are another entirely artificial category of formula; these have no nutritional or health benefits beyond that provided by ordinary cow's milk alongside a suitable toddler diet of complementary foods; in fact, they often contain excessive amounts of sugar and may contribute to growing childhood obesity (First Steps Nutrition Trust, 2024). The CMA found that parents who are using GUM could save several hundreds pounds a year by using ordinary cows milk after 12 months

We suggest that SACN review all categories of infant formulas to determine which categories should be maintained.

First Steps Nutrition Trust. (2024) *Drinks for young children marketed as 'growing up' and 'toddler' milks and drinks*

CMA 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.

As the CMA Interim report found, manufacturer profit margins are among the highest of grocery products, and these high profit margins are maintained by passing costs onto consumers. As a food that is required for those infants who are not breastfed, the end consumers are babies and their families, and the CMA has rightly pointed out that these purchasing decisions are often taken at a vulnerable time, so parents often end up paying higher prices than they need to.

We do not however agree that competitive markets are the best or only solution to this issue. Infant feeding is a complex and multi-faceted issue, and while costs can have a significant impact on babies and their families, especially during a cost-of-living crisis, price is not the only or even the driving force behind parents' decisions. We would urge the CMA to collaborate with other sectors such as governmental health and public health agencies to ensure that policies are joined up, to remove loopholes and to anticipate any unintended consequences.

The CMA report has rightly identified cross promotion as a concern. The nearly identical package labelling between different ages or 'stages' of formula can risk parents inadvertently using the wrong product for their infant. This could cause illness in a very young baby whose kidneys are not developed enough to process the ingredients in formula for older babies.

We do not agree that lighter regulation would automatically lead to lower prices for parents, or to competitive pressure on companies to squeeze their profit margins to reduce price increases. There is currently competition within the follow on formula market due to fewer regulations or limits on advertising, but this has not produced significantly lower prices or profit margins.

Tighter regulation of health and other claims is needed. One example that is not explored in depth in the CMA report is the case of Foods for Special Medical Purposes (FSMPs). While some FSMPs are needed for specific medical purposes, other categories such as 'comfort formula' or 'hungry baby formula' have no proven medical or scientific benefits; these categories serve no medical purpose and are commonly used as loopholes to escape existing regulation of first stage formula (Westland and Sibson, 2022), while exploiting parental concerns about normal infant behaviour such as crying, normal feeding cues, or waking at night to feed (. ŚJ=R#K; 9E AD9 =L9D 2023).

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Westland, S. and Sibson, V. (2022). Infant milks marketed as foods for special medical purposes (FSMP): The case for regulatory reform to protect infant health. Baby Feeding Law Group. https://www.bflg-uk.org/our-work

Product differentiation

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

a. consumer behaviour (section 5)

b. the regulatory framework (section 6)

c. competition in the market (section 7)

i. competition between manufacturers/brands

ii. competition between retailers

iii. barriers to entry and expansion

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

Our provisional views on possible remedies

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

Information and supply in healthcare settings

Information on the nutritional equivalence of infant formula products is already part of UNICEF UK Baby Friendly training for healthcare workers, but is undermined by claims by companies in widely available marketing and promotions. Online and digital promotions are also heavily targeted towards pregnant women by the algorithms and digital tools used by manufacturers and online platforms (such as advertising on Facebook).

Public information campaign

We support the CMA recommendations that clear and widespread information should be provided to the public that all infant formulas are nutritionally equivalent, and that all infant formulas must meet the same mandatory requirements to provide the basic nutrition that infants require. Manufacturers use different recipes to meet the mandatory requirements; some of these are non-nutritive ingredients such as preservatives or anti-caking; public information should include the fact that while the *nutritional* standard is identical, the actual ingredients may vary, so some infants may prefer one or another. A public information campaign would help to counter misleading claims and advertisements.

Public information campaigns should also inform public that FOF and GUM are not required, that older babies (6-12 months) who are not breastfed can get all their nutritional needs met by first stage infant formula plus suitable complementary foods up to one year, and by transitioning to cow's milk as their main drink after one year.

Information portal

We support the CMA proposal for a well-publicised and easily accessible NHS online portal on information comparing brands and info on costs (including comparison of cost of FOF/GUM vs use of cow's milk from 12 months). This should be complemented by

the above national social marketing information campaign, supported by banning promotion of any infant milks up to 3 years.

Currently a high quality resource on the composition and costs of infant formulas is produced by First Steps Nutrition Trust (https://infantmilkinfo.org/) but providing this information is really the responsibility of the government and health service. It should not be left to the third sector to research and to fund.

Standardised packaging
The CMA's option of standardised packaging in NHS settings would reduce the burden on NHS staff time explaining and handling different brands, and the stress on limited NHS storage facilities, compared to the negative impact of suggestion of providing a range of brands in each facility.

'Balanced procurement'
We do not support the proposal of NHS healthcare settings providing a range of formula brands. This would place a burden on healthcare staff, who are already under pressure from time and staffing shortages, and would be impractical in many hospitals, which have no additional space for storage.

Information and price promotion in retail settings

It is our opinion that permitting advertising of price reductions on formula would have limited impact on family budgets, and would risk an increase in the use of formula for non-medical reasons.

With regard to the suggestions about using labels or shelf talkers explain the nutritional equivalence of products, and QR codes to link to clear and factual assessment of health and nutrition claims, as well as a reminder that FOF is not necessary or recommended: it is important to communicate these well and these suggestions should be considered. QR codes could be an effective way to communicate with some families, but are unlikely to reach families without access to a smartphone or who have little credit available to use one. Easy read text and translations would also be required in order to communicate these messages to the widest audience. A public information campaign should support the communications on labels or in store.

On a practical level, shelf talkers may not be as effective as required text on packaging labels to communicate nutritional equivalence

Regulations on in-store promotions and shelf positioning to avoid cross promotion should be monitored and enforced; currently it is too easy for different 'stages' of products to be confused.

With regard to allowing the advertising of price reductions: CMA's own investigation shows that parents are not very price sensitive, so it is not clear that this would have the intended result. On the other hand, allowing advertising is likely to have unintended consequences:

1) Retailers and manufacturers are likely to raise prices elsewhere to compensate for discounts and price cuts

2) Unpredictable changes in prices are not helpful for family budget planning in vulnerable circumstances. Many families with infants are on lower incomes while one parent is on maternity or parental leave.

3) Permitting advertising of formula is associated with increasing sales of formula. A clear example can be seen when comparing China's increase in formula sales, with little or no regulation of advertising, compared to the static sales of formula in India, where there is are strict formula marketing laws, over the same time period (see Figure 8, page 38, in Save the Children, 2013)

Save the Children. (2013). Superfood for Babies: How overcoming barriers to breastfeeding will save children's lives. https://resourcecentre.savethechildren.net/document/superfood-babies-how-overcoming-barriers-breastfeeding-will-save-childrens-lives/

Clarifying, monitoring and enforcing the existing regulations

The existing marketing regulations on formula should be expanded to cover all formula milk products from birth to three years, following WHO's guidance (WHA, 2016), as these are critical years for child growth and development. Marketing regulations should be widened to cover other products specified by WHO (1981ff) as replacements for breastfeeding: baby foods under six months, bottles and teats. Unbiased information about ingredients, materials, sizes etc should be permitted, but no advertisements, promotions, or intangible, unverifiable or health claims. Parents should be supported to make decisions about feeding infants and young children based on their health rather than on commercial influence.

We welcome the CMA's recognition that marketing and promotion in digital spaces should also be covered. WHO has produced *Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes* that should be considered here (WHO, 2023).

Strengthening and enforcing marketing regulations would provide a level playing field for all companies; voluntary action in this arena has not been effective (https://www.dairyreporter.com/Article/2021/03/25/Call-to-Action-groups-disappointed-by-formula-producers-response-on-marketing/). All measures should be mandatory and universal.

To aid in fair and consistent enforcement of marketing regulations, enforcing authorities such as local authorities and trading standards officers should be properly resourced; central funding cuts should be addressed or reversed.
Partnerships with infant formula, baby food, or bottles companies constitute conflicts of interest and should not be permitted.

The ASA should be supported to investigate and enforce regulations more thoroughly.

Government should also emphasise the importance of the Guidance Notes in enforcement.

World Health Assembly. (2016). *Maternal, infant and young child nutrition: guidance on ending the inappropriate promotion of foods for infants and young children: report by the Secretariat*. World Health Organization. https://iris.who.int/handle/10665/252656

World Health Organization. (1981ff). *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant WHA *Resolutions*. https://www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems/code-and-subsequent-resolutions

World Health Organization. (2023). *Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes*. https://www.who.int/publications/i/item/9789240084490

Strengthening labelling and advertising rules.

The CMA has proposed some important improvements in strengthening labelling and advertising rules, which we support.

- To stop cross promotion, entirely different brand names, graphics and logos should be used between first stage infant formula and any other products.
- Standardised labels with company name and logo, and essential information on ingredients etc would reduce design costs for companies
- Stricter thresholds for intangible and non-verifiable claims, as well as health and nutrition claims, which have been used to justify charging premium prices.

We do not see stricter regulations stopping new players entering the market, as they would find a more 'level playing field' if no companies are spending on marketing and promotion, and there would be less need for new entrants to make major investment in marketing, as noted by the CMA.

We support the CMA proposals on pre-authorisation.

Cross promotion contributes to the CMA's finding that advertising spend on FOF and GUM can have an 'outsized influence' on parents' purchasing decisions', resulting in some parents paying more than they should.

We support the CMAs proposal to extend the prohibition on advertising to FOF and prohibit all brand-related advertising. This should be extended to ALL formula milk products from birth to three years, as recommended by WHO (WHA, 2016), as well as to baby foods, bottles and teats (WHO, 1981ff).

World Health Assembly. (2016). *Maternal, infant and young child nutrition: guidance on ending the inappropriate promotion of foods for infants and young children: report by the Secretariat*. World Health Organization. https://iris.who.int/handle/10665/252656

World Health Organization. (1981ff). *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant WHA *Resolutions*. https://www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems/code-and-subsequent-resolutions

Backstop interventions

(a) Price controls

We would support a price cap, or profit margin cap. This could address cost of living issues more quickly. We suggest that government investigate this option.

(b) Public provision.

This could also be an effective intervention. The NHS schemes of spectacles and dental care for children are effective in improving child health and don't have any known 'stigmatising' effect.

We agree that any such scheme would *also* require the improved public information campaign on the nutritional equivalence of all stage one infant

formulas, and the fact that FOF is not required or recommended, mentioned above
We do not see 'profitability' for a government health scheme as relevant – NHS spectacles and dental care for children do not produce a 'profit' for the government, although they do contribute to improved health and reduced health care costs in the long term.

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

a. price

b. product differentiation and/or

c. choice d. other (please specify)

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

a. price

b. product differentiation and/or

c. choice d. other (please specify)

9. Do you consider that revising the regulations to ensure that manufacturers and retailers are permitted to publicise (i) prices and (ii) price reductions (section 8) is likely to induce the use of infant formula? If yes, please explain to what extent you consider this is likely to occur and any possible mitigations.

We do not support permitting advertising of prices or price reductions. Permitting advertising of formula is associated with increasing sales of formula. A clear example can be seen when comparing China's increase in formula sales, with little or no regulation of advertising, compared to the static sales of formula in India, where there is are strict formula marketing laws, over the same time period (see Figure 8, page 38, in Save the Children, 2013).

Save the Children. (2013). Superfood for Babies: How overcoming barriers to breastfeeding will save children's lives. https://resourcecentre.savethechildren.net/document/superfood-babies-how-overcoming-barriers-breastfeeding-will-save-childrens-lives/

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.

Possible adverse consequences for parents of advertising price reductions:

- Unstable and unpredictable prices if they are frequently changing; price reductions likely to be offset by price increases at other times;
- Temporary price reductions or other price promotions/ offers could stimulate stockpiling of formula, which could lead to product shortages which affect all families.
- Stockpiling can also lead to waste as formula products have a limited shelf life and could expire.

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).

Strengthening support for vulnerable and low income families would be a more equitable way to improve access to formula for low income families.

1) increase value of Healthy Start and peg to food inflation
2) increase access to Healthy Start - (Barrett et al., 2024) found that over a third of eligible families aren't even accessing Healthy Start, and they make a number of recommendations to address this.
   a. Actions to widen participation in Health Start include:
      i. Social marketing campaign to inform public
      ii. Auto enrolment when baby is registered
3) widen eligibility so that all low income families in the UK are covered, including those with no recourse to public funds (student visas, refugees and asylum seekers).
   a. Increase alternative payments for these categories (in line with Healthy Start, pegged to food inflation)
4) Any financial penalties for retailers or manufacturers to contribute to the Healthy Start funding.

Barrett, M., Spires, M. & Vogel, C. The Healthy Start scheme in England "is a lifeline for families but many are missing out": a rapid qualitative analysis. *BMC Med* **22**, 177 (2024). https://doi.org/10.1186/s12916-024-03380-5