

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission
Question No: 107
Topic: Promotion of processed foods including milk formula for infants and young children - Regulation of marketing activity
Reference: Written
Senator: Kakoschke-Moore, Skye

Question:

In 1981 Australia voted in support of adoption of the WHO International Code of Marketing on Breastmilk Substitutes, and of subsequent relevant WHA resolutions, and apparently including the 2016 guidance on inappropriate marketing of foods for infants and young children. In 2010, WHO issued a statement that toddler formulas were being misused to promote infant formula and that these toddler formulas were unnecessary and possibly harmful to children. The WHO's most recent 2016 guidance on inappropriate promotion of food for infants and young children makes clear that inappropriate promotion of commercial processed baby foods including all milk formulas for children 0-36 months undermines breastfeeding and optimal child nutrition and health.

ACCC recently approved a proposed agreement by Infant Nutrition Council (INC) members to restrain marketing of infant formula to the public (which doesn't prevent marketing via the health system) for 5 years, despite the vast majority of the 106 public submissions on its draft determination and several parliamentarians requesting it not be approved for longer than 2 years.

Why did ACCC give its approval without requiring any undertakings by the industry to strengthen its effectiveness, when the ACCC clearly had the power to do so (ACCC determination A91506 and A 91507)? Given there are concerns the industry has shown that it is unwilling to regulate itself effectively and comprehensively in line with international standards and guidance including from the World Health Organisation, does the ACCC agree that Australian government legislation or regulation would be more effective to prevent inappropriate promotion of milk formula and protect breastfeeding? With strong evidence from Australia and many other countries of hundreds of millions of dollars of cost savings from higher breastfeeding, wouldn't the expected savings to the health system justify the small additional costs of effective regulation of inappropriate marketing?

Answer:

With regard to the reasons the ACCC did not require any undertakings from the Applicants in relation to the effectiveness of the *Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement* (MAIF Agreement), for which the Infant Nutrition Council (INC) sought re-authorisation on 15 July 2015, the response to QON 105 is also relevant.

The ACCC's role in assessing applications for authorisation is to apply the relevant statutory test; that is, to determine whether the benefits of the conduct proposed are likely to outweigh any detriments from that conduct. On this basis, the ACCC determined that the application in

respect of the MAIF Agreement should be authorised. The ACCC therefore did not consider it necessary to seek or require any undertakings from industry to strengthen the MAIF Agreement.

The ACCC notes that the Australian Government has chosen to implement the WHO International Code of Marketing on Breastmilk Substitutes (WHO Code) primarily through the MAIF Agreement. The ACCC understands the scope of the MAIF Agreement to be in line with current Government policy, and that the Department of Health supports its continued operation. In its consideration of the application to re-authorise the MAIF Agreement, the ACCC concluded that the MAIF Agreement was likely to result in significant benefits through restricting the marketing of infant formula, by protecting breastfeeding and avoiding the regulatory costs from alternative solutions.

Questions of effectiveness and cost of potential regulatory or legislative responses to prevent inappropriate promotion of milk formula and protect breastfeeding are a policy matter for the Department of Health and Government. As noted above, the ACCC's role was limited to assessing the proposed conduct as contained in the authorisation application and applying the relevant statutory test.