



**Australian Competition & Consumer  
Commission (ACCC)**  
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**DATE:**  
29 April 2024

## **SUBMISSION TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION (ACCC) FOR RE-AUTHORISATION OF THE MAIF AGREEMENT FOR A 5-YEAR PERIOD, WITHOUT CONDITIONS.**

To Whom It May Concern

Nutricia Australia Pty Ltd (**Danone**) welcomes the opportunity to comment on the Infant Nutrition Council's (**INC's**) application for re-authorisation of the Marketing in Australia of Baby formulas (MAIF) Agreement (**Agreement**) for a 5-year period, without conditions. Danone appreciates the significant amount of work the Australian Competition & Consumer Commission (**ACCC**) has done to get the submission to this stage and trusts that ACCC will provide due consideration to all submissions.

Danone is a member of the INC. To that end, Danone fully supports the INC's submission for re-authorisation of the Agreement for a 5-year period, without conditions. The INC's submission is comprehensive, and Danone does not wish to re-iterate the INC's position, which materially represents its own. Therefore, this submission will only address aspects specific to Danone.

In summary:

- Danone unequivocally agrees with the view that breast milk and breastfeeding are optimum for baby health. However, for those who cannot, or choose not to breastfeed their children, baby formula products are recognised in medical guidelines as the only safe and nutritionally adequate alternative to breastfeeding during a baby's first year.
- Danone is a proud signatory of the Agreement and has rigorous processes to ensure it does not breach it. Danone has a [Policy for the Marketing of Breast-Milk Substitutes \(BMS Policy\)](#) that prohibits the advertising and promotion of baby formula for babies up to six months of age in Australia.
- Danone is concerned that while the Government is considering what, if any, action it will take in response to the MAIF review, without a self-regulatory agreement secured between the Government and the INC, a void will be left through which the positive effects flowing from the Agreement on the promotion and protection of breastfeeding and the reputation of the baby formula industry will be lost.

In the absence of the Agreement, Danone will continue to work ethically and adhere to the requirements of its BMS Policy and Health Care Systems Policy. Through its commitments as a B-Corp, and as a participant of the

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### **DANONE**

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FTSE4Good and ATNI nutritional indices, Danone is specifically committed to the health and nutrition of mothers and babies from the youngest age. However, several signatories to the Agreement which do not have a global footprint or are not as well-established in Australia, and may not be as well-resourced, do not appear to have internal policies to address the inappropriate marketing of breast milk substitutes. The absence of a self-regulatory agreement to which these signatories voluntarily adhere will likely result in less ethical marketing to consumers from these signatories, which will erode the best industry practices built since the inception of the Agreement, tarnish the reputation of the industry, and put caregivers in a more vulnerable position when faced with making an informed choice regarding the most suitable feeding option for their babies.

Yours faithfully,

*Maria Venetoulis*

Maria Venetoulis  
Director – Legal, Compliance, Regulatory and Corporate Affairs

#### **ABOUT DANONE ([www.danone.com](http://www.danone.com))**

*Danone is a leading global food and beverage company operating in three health focused, fast-growing and on-trend categories: Essential Dairy & Plant-Based products, Waters and Specialized Nutrition. With a long-standing mission of bringing health through food to as many people as possible, Danone aims to inspire healthier and more sustainable eating and drinking practices while committing to achieve measurable nutritional, social, societal and environment impact. Danone has defined its Renew strategy to restore growth, competitiveness, and value creation for the long-term. With over 96,000 employees, and products sold in over 120 markets, Danone generated €27.6 billion in sales in 2023. Danone's portfolio includes leading international brands (Actimel, Activia, Alpro, Aptamil, Danette, Danio, Danonino, evian, Nutricia, Nutrilon, Volvic, among others) as well as strong local and regional brands (including YoPro, Karicare, Cow & Gate, Mizone, and Oikos).*

*Listed on Euronext Paris and present on the OTCQX platform via an ADR (American Depositary Receipt) program, Danone is a component stock of leading sustainability indexes including the ones managed by Moody's and Sustainalytics, as well as the MSCI ESG Indexes, the FTSE4Good Index Series, Bloomberg Gender Equality Index, and the Access to Nutrition Index. Danone's ambition is to be B Corp certified at global level in 2025.*



## **DANONE'S PRACTICES ON THE MARKETING OF BABY FORMULA**

Danone unequivocally agrees that breastfeeding is key to giving babies the best nutritional start in life. However, parents want and deserve to be educated and empowered to choose the best way to feed their children. Feeding realities are multiple; some parents cannot breastfeed, and many also choose to feed their children partially or fully with baby formula. This is for many different reasons, including the return to work or poor breastfeeding counselling.

For over 50 years, Danone has been researching the science of breast milk and breastfeeding, as well as its benefits for the health of both mother and child. Danone is a world expert in this area with 3 research institutes and approximately 450 scientists.

Danone is always clear in communication to parents and caregivers that breast milk is the best source of nutrition for babies. When Danone engages Healthcare Professionals (HCPs), it's on scientific and factual grounds, to advance knowledge, innovation, and nutrition.

Danone provides ongoing training and guidance to its staff and partners, as well as regular internal and external assessments. This ensures a focus on continuously improving how it operates in this area. In addition, Danone was the first company not to advertise or promote baby formula for children aged 0-6 months in all countries globally, even when local laws permitted this. Since then, Danone has seen other companies unilaterally join this movement to adopt global standards for baby formula marketing.

Danone's primary concern is that babies and parents do not become the poor relation of regulation. Access to information and education by HCPs, mothers, parents, and caregivers is the means to ultimately improve the nutritional status of babies and young children. Danone is committed to ensuring parents and caregivers receive the information and support they need and deserve on breastfeeding, mixed feeding, and formula feeding – so that choices can be made, and all feeding journeys respected.

### **BMS Policy**

Danone was the first company to apply a voluntary global marketing policy ([Danone Policy for the Marketing of Breast-Milk Substitutes](#)) that prohibits the advertising and promotion of baby formula for babies up to six months of age, even if permitted by local laws. Danone has also voluntarily extended the BMS Policy to 12 months in parts of the world where baby health is more at risk (as per the FTSE4Good definitions) to encourage breastfeeding.

### **HCP Engagement**

The Agreement recognises the value of “scientific and factual” dialogue between manufacturers and HCPs. Danone supports HCPs to grow their knowledge on infant nutrition by sharing relevant and current scientific evidence, providing evidence-based educational opportunities, maintaining online HCP information hubs, and supporting scientific congresses and conferences.



The Danone Health Care Systems (HCS) Policy outlines requirements to ensure that any interactions with Health Care Systems including HCPs are conducted in an ethical, open, transparent and responsible manner, and are compliant with applicable laws and regulations.

### **DANONE'S COMMITMENT TO COMPLIANCE**

Danone takes seriously any complaints it receives regarding the quality of its products or services, or its business practices. It is fair, transparent, indiscriminative, and ethical. These are at the core of Danone's business principles. This is highlighted through other organisations with which Danone associates and from which it obtains accreditation, including (without limitation) B-Lab for its B Corp accreditation, the FTSE4Good Index, and the ATNI nutrition index.

All Danone employees and contractors undertake a formal induction which includes training and testing on Danone's policies, including its BMS Policy and HCS Policy, and informed that non-compliance with these policies is not tolerated and may result in disciplinary action. The disciplinary action will vary according to the severity of the non-compliance, but could include the cancellation of the individual's bonus, postponement of promotion, suspension without pay, termination of employment or being reported to the authorities.

The Danone Ethics Line is a confidential online platform ([www.danoneethicsline.com](http://www.danoneethicsline.com)), heavily promoted within Danone and to third parties which interact with it, and used to report concerns regarding compliance with Danone's policies or applicable codes of conduct or potential violations of laws and regulations, and any other ethics-related concerns about which users wish to seek actionable advice. Danone has a Global function dedicated to investigating all reports received through the Ethics Line world-wide which liaises with the relevant local departments (for example, Compliance, Legal or Human Resources) as required to address, resolve, and implement learnings from the matter.

Danone publishes an annual report ([Danone BMS Compliance Report 2023](#)) detailing its compliance with its BMS Policy. Danone transparently reports about its progress in responsible marketing of baby formula based on independent external assessments and internal independent monitoring.

As a proud signatory of the Agreement, Danone has rigorous processes to avoid breaching it and conducts full investigations on any complaints of breach it receives thereunder.

Between 2001 to 2023, Danone was found in breach of the Agreement on nine occasions. All breaches were addressed immediately. For example, as soon as it was made aware that one of its digital advertisements displayed baby formula, Danone alerted its agency of the breach, and the offending material was removed from circulation within 24 hours. Upon the breaches being identified, Danone also worked with the Department of Health through INC to update guidance materials for the Agreement. Updating guidance materials ensures that signatories and the MAIF Complaints Committee consistently interpret the Agreement to improve the signatories' ways of working and



allows for the Agreement to keep in step with developments in the external marketing and promotional environment (e.g. the advent of social media and influencers). For example, because of a rectification action taken by Danone following a breach of the Agreement, the updated '[Guidance for interpretation of the MAIF Agreement – Electronic media](#)', published on the Department of Health's website in April 2022, now clarifies that manufacturers may communicate through social media to consumers only in the case of urgent health and safety matters; any other communication would be considered promotional and therefore not permitted under the Agreement.

Danone also initiates corrective actions beyond its immediate scope of responsibility, such as training its agencies on its obligations under the Agreement and its internal policies, which it has done annually since 2021; twenty-four agencies were trained in 2022 and 28 in 2023. This training ensures that Danone's agencies understand and mimic its high compliance standards when generating marketing and promotional materials.

In addition to this, the Danone Regulatory Affairs function meets with its internal marketing function and external agencies to foster an understanding of innovative marketing practices, with a specific focus on digital marketing. This is to ensure that any new practices develop taking into consideration the requirements of the Agreement.

## **HOW DOES THE AGREEMENT ELEVATE THE INDUSTRY'S ETHICAL MARKETING PRACTICES, AND WHAT MAY HAPPEN WITHOUT IT?**

The BMS Policy states that if local policies differ from the BMS Policy, the strictest will prevail. There are several examples in Australia where Danone must comply with the Agreement because it is stricter than the BMS Policy. Here are a couple of examples:

### **1. Products in Scope**

Danone's BMS Policy applies worldwide to the marketing of baby formula for babies up to the age of six months, of which products intended for use by babies with special medical conditions are excluded. The Agreement defines as baby formula products as being for babies up to the age of twelve months, including baby formulas for special dietary use. In Australia, as a signatory to the Agreement therefore, Danone does not advertise or promote baby formula products for babies up to the age of twelve months despite its BMS Policy.

### **2. Caregiver Classes**

The BMS Policy allows for personnel from the Medical Affairs & Market Access (MAMA) function to participate in classes through a healthcare organisation that focuses on preparing caregivers with proper nutrition for babies within their first 1,000 days. The classes must only provide independent scientific and educational content. However, as a signatory to the Agreement<sup>1</sup>, Danone does not permit its MAMA personnel to participate in such classes in Australia

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<sup>1</sup> Clause 6 (c) of the MAIF Agreement specifies that the health care system cannot use "professional service representatives", "mothercraft nurses", or similar personnel, provide or paid for by manufacturers or importers of baby formulas". In addition to this, clause 6 (d) requires feeding demonstrations to be provided by a health care professional only.



The above examples alone demonstrate how Danone, which already has rigorous policies, directives, and processes to hold itself to account in ensuring its reputation as an ethical manufacturer and marketer of baby formula, is challenged by the Agreement to elevate its standards when operating in Australia. Nevertheless, in the absence of the Agreement, Danone will continue to work ethically within this space by adhering to its BMS Policy and HCS Policy, as well as by upholding its commitments as a B-Corp and participant in the FTSE4Good and ATNI nutritional indices.

All baby formula products in Australia must adhere to the requirements in the Australia New Zealand Food Standards Code. Without the Agreement, these requirements will continue to stand. However:

1. The requirements of the Food Standards Code (Code) do not restrict all unethical marketing practices of baby formula. The prohibitions outlined in the Code focus heavily on product labelling; for example, no nutrition content or health claims are permitted on labels. As the Code is not an advertising code, it does not extend to other promotional activities, such as the use of branding and retail activations, which are covered by the Agreement. Therefore,
2. a void will be left through which the positive effects flowing from the Agreement on the promotion and protection of breastfeeding and the reputation of the baby formula industry will be lost.

Several signatories to the Agreement do not have a global footprint or are not as well-established in Australia and may not be as well-resourced to develop and roll out the education and ongoing compliance programmes associated with effective internal policy implementation. In fact, a review of signatories' websites reveals that at least 13 signatories to the Agreement do not have published policies protecting and promoting breastfeeding. For these signatories, the Agreement would be the predominant, if not the sole map from which the paths and boundaries for their marketing and promotion of baby formula are determined, and the INC would be the predominant or sole source of their education, guidance, and monitoring for Agreement compliance and best industry practice.

The absence of a self-regulatory agreement to which these signatories voluntarily adhere will likely result in less ethical marketing to consumers from these signatories, which will erode the best industry practices built since the inception of the Agreement, tarnish the reputation of the industry, and put caregivers in a more vulnerable position when faced with making an informed choice regarding the most suitable feeding choice for their babies.