

NESTLÉ
FINAL ASSESSMENT OF BMS CALL TO ACTION SIGNATORIES



NESTLÉ S.A.

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Vevey, December 3rd, 2020

Dear Jennifer, Dear Connie,

We welcome the Call to Action as a significant milestone in the implementation of the [WHO Code](#) and subsequent relevant resolutions. We thank the signatories for the role that they and other civil society organizations have played in advancing infant and maternal nutrition over the past decades, both across the industry and in helping Nestlé improve its own practices.

Nestlé firmly believes that breastmilk is the ideal food for babies, and we support the World Health Organization's recommendation of exclusive breastfeeding for the first six months of life, followed by continued breastfeeding along with the introduction of complementary foods.

Through its policy, Nestlé recognizes the WHO Code and subsequent relevant resolutions as the international reference framework for the promotion of breast milk substitutes (BMS) and, as a minimum, complies to the WHO Code as implemented by national governments everywhere.

We also share the ambition of the Call to Action to go further – as a company and as an industry. We will show leadership and work towards compliance with the WHO Code and its subsequent relevant resolutions on a voluntary basis. Full implementation of the Code will require both the commitment and action of industry, civil society organizations and Member States. These actions need to be taken in a series of complementary steps to ensure progress is made across the board.

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Signatories' assessment

Ask 1: Publicly commit your company to full compliance with the International Code of Marketing of Breast-milk Substitutes and subsequent resolutions (the Code) globally (including covering of breast-milk substitutes up to 36 months of age), and disclose a concrete plan for achieving this goal by 2030 at the latest, with delineation of clear incremental steps.

The company does not make the requested commitments. However, the Signatories welcome Nestlé's recognition of the WHO Code and subsequent relevant resolutions as the international reference framework for the promotion of breast milk substitutes (BMS) and encourage other companies to do the same.

Our expanded commitments

Building on our progress to date, Nestlé makes the following new commitments in immediate response to the Call to Action:

- To unilaterally stop promotion of infant formula in ALL countries for babies 0-6 months. This significant step extends the provisions of our existing policy¹ to the few countries where it has not applied to date and is particularly relevant to the USA, Canada and Japan, where no regulations currently exist. We will start the process now, to be completed by December 2022.
- To actively engage with stakeholders including the WHO, UNICEF and the other signatories of the Call to Action to find ways to advance industry commitments on the promotion of infant formula for babies aged 0-12 months, while ensuring compliance with antitrust laws.

Signatories' assessment

Ask 2: As a first step towards full Code compliance, by the end of 2020, for a company that has a BMS marketing policy in place (as is the case for Nestlé), ensure that your current policy and practices (including promotion to consumers and healthcare providers) are Code-aligned and for products marketed as suitable for infants between birth and 12 months of age, extend them to all countries, and commit to upholding your policy in all jurisdictions even where regulations are absent or less stringent than your policy. In countries where national law is more stringent than your policy, adherence to national law always takes precedence.

The company makes part of the requested commitment. The signatories welcome Nestlé's commitments to extend its current published policy to unilaterally stop promotion of infant formula in ALL countries for babies 0-6 months, continue its existing policy of not marketing formula suitable for infants between 6-12 months in higher risk countries, and uphold its policy where regulations are absent or less stringent. To fully meet this ask, the company would need to extend its existing policy to all countries.

We await the results of ATNI's forthcoming 2021 BMS Marketing Index to determine the extent to which the company's current policy and practices for these products align with the Code and all subsequent relevant WHA resolutions. The results of the 2018 Index indicated that they did not do so.

¹ [Nestlé Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breast Milk Substitutes](#) Annex A, in particular Art 4 to Art. 9

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- To actively engage with stakeholders to encourage implementation of the WHO Code and subsequent relevant resolutions into national laws. Nestlé supports regulating promotion of infant formula for babies aged 0-12 months globally. The most effective way to secure Code compliance is through well-drafted and well-implemented legislation. To achieve this, we would like to engage with the WHO, UNICEF and the other signatories of the Call to Action to advocate for Code adoption by Member States.

Signatories' assessment

Ask 3: Commit to support the adoption and implementation of national legislation fully aligned with the Code in order to create a level playing field for all companies.

The company states they will actively engage with stakeholders to encourage implementation of the WHO Code and subsequent relevant resolutions into national laws. They specify that Nestlé supports regulating promotion of infant formula for babies aged 0-12 months globally. To fully meet this request, the company would need to support legislation fully aligned with the Code for all products 0-36 months.

- To continue to provide relevant information to the Access to Nutrition Initiative (ATNI) as a platform to stimulate progressive change.

Signatories' assessment

Ask 4: Agree to provide information on your company's policies and practices to the Access to Nutrition Initiative (ATNI) as requested, recognizing ATNI as an independent actor responsible for monitoring companies' progress toward their plans for achieving Code compliance.

The company makes the requested commitment.

Nestlé is included in ATNI's forthcoming 2021 BMS Marketing Index.

- To offer our technical expertise on request to any BMS company who would like to learn from our many years of experience in creating a robust, WHO Code-aligned policy and governance system.
- To offer our support to stakeholder coalitions on their request to advocate for:
 - ✓ environments conducive to parenting, such as parental support policies and programs;
 - ✓ raising awareness and eliminating the use of inappropriate breastmilk substitutes.

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The road to 2030

We would like to work with the signatories to help drive efforts to bring the majority of the industry up to a common level of performance on the promotion of infant formula for babies aged 0-12 months globally. In support of this, Nestlé offers to:

- **Actively engage with stakeholders to find a pathway to advance industry commitments** on the promotion of infant formula, while ensuring compliance with antitrust laws. From an industry point of view, this is highly sensitive, so we urge Meridian, BMGF and the signatories, particularly WHO and UNICEF, to use their best efforts to find a pathway forward.
- **Conduct joint advocacy** with CTA signatories and industry members, with a focus on US, Europe and China. We understand that advocacy for “weak” Code legislation raises legitimate concerns. For this reason, we make a clear commitment that we will only lobby in favor of legislation that meets at least a minimum threshold of Code alignment on BMS aimed at infants aged 0-12 months of age.
- **Further strengthen our policies**, guided by our assessment under the [Responsible Lobbying Framework](#). This will improve disclosure of our lobbying and advocacy activities on the responsible marketing of BMS.
- **Work with global and regional retailers and e-commerce players** to help contribute to WHO Code compliance.
- **Engage with institutional investors** to support efforts to encourage Code implementation and include BMS marketing practices in indices beyond FTSE4Good and ATNI.

Signatories’ assessment

The Signatories welcome Nestlé’s commitments to follow the Responsible Lobbying Framework and to improve disclosure of its lobbying and advocacy activities related to BMS, to work with global and regional retailers and e-commerce players to contribute to WHO Code compliance, and to engage with institutional investors to support efforts to encourage Code implementation.

Concerns for consideration and further dialogue

As noted above, we support the aim and the intentions of the CTA to extend full Code compliance across the industry. However, there are areas of concern for Nestlé as we look to achieve even greater Code compliance.

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Our first concern is the possibility that increased Code compliance by a few individual companies may, in fact, result in an overall increase in the promotion of BMS across the sector. This is a realistic possibility if companies that do not commit beyond compliance with national law maintain or even increase their promotional activities while other companies are moving ahead on Code compliance. This is of particular concern in the two largest markets - where there is currently no Code legislation.²

Our second concern relates to the continued exposure of infants and young children to inappropriate breastmilk substitutes, such as water, cow's milk, juices and other sugary drinks. Unfortunately, the use of such substitutes is still all too common in many places. We believe every effort must be made to eliminate such exposure and ensure no actions are taken that could inadvertently promote this dangerous practice.

In our view, the potential real-world impacts of the implementation of WHA 69.9 on the exposure of infants and young children to inappropriate breastmilk substitutes are, at present, insufficiently understood. On the journey to Code compliance, we believe there is an urgent need to better understand the scientific evidence and these potential implications. To address this, Nestlé proposes a thorough, academically rigorous study to understand all the potential impacts of implementing 69.9, while remaining consistent with other WHO principles and guidance. We are willing to financially support such a study which should be conducted by an independent, credible party commissioned and supervised by a multisectoral working group.

Thirdly, we believe that the topic of engagement with healthcare professionals (HCPs) has been insufficiently addressed. Science-based information is essential to enable HCPs to fulfil their role in counselling mothers on the nutrition and health of their babies. We believe this calls for further dialogue among stakeholders to seek closer alignment.

Finally, while breast feeding rates are increasing globally, the barriers to breastfeeding are high and, in some instances, getting higher. We believe that returning to work and accessing supportive childcare continues to be a significant barrier for breastfeeding. Mothers and fathers need more support. We encourage all parties, including the signatories, to help drive parental support policies in countries that do not have such regulation in order to create the right conditions for working women and families. We are committed to supporting all such efforts to reduce the barriers to breastfeeding and helping parents through advocacy, sharing our experiences as a global employer and supporting the gathering of evidence about parenting in today's world.

Our support for parents

Recent research carried out with parents has given us a fuller understanding of the demands and challenges of parenting in today's world. We take pride in how we acknowledge the dual role of parent and employee through benefits and services, such as our global Parental Support Policy, which is gender-neutral and offers 18 weeks of fully paid parental leave for primary caregivers and a minimum of four weeks for secondary caregivers. We also provide rooms for employees to express breastmilk in all Nestlé facilities with more than 50 employees.

² The publication of implementation plans of individual companies could exacerbate the potential for this unintended outcome. For this reason, we will limit the publicly available information on the steps we will take to meet the commitments we have made. We think it would be more productive to explore the co-creation of a roadmap with willing CSOs and industry participants, in compliance with antitrust laws, to allow for critical inter-dependencies and stepwise progress.

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But we also know that not all mothers are able to, or choose to, breastfeed. And as the WHO recognizes, infant formula is the only suitable alternative for babies who cannot be fed on breastmilk. This is why Nestlé is proud to continue to produce breast-milk substitutes, always holding ourselves to the highest safety and quality standards.

Our track record on WHO Code compliance

Nestlé was the first company in the world to recognize the WHO Code through its BMS marketing policy in 1982, and the first to join [FTSE4Good](#) in 2011. We do not promote infant formula intended for babies up to 12 months of age in 160 countries (82% of the countries in which we operate), in which we apply the provisions of our policy even where they are stricter than national law. Naturally, we always comply with national law where it is stricter than our policy.

Policy is important, but so too is a culture of compliance. At Nestlé, we strive for industry-leading, robust and independent governance systems to ensure compliance, with ultimate responsibility resting with the Nestlé Executive Board. We annually commission three external independent audits. In addition, we conducted more than 90 internal audits in the last three years alone. We open ourselves up to scrutiny from independent organizations such as FTSE4Good and ATNI. All employees in our infant formula business complete mandatory WHO Code training upon hiring, followed by regular refresher courses. If there is any evidence of non-compliance, we take swift and decisive action. For example, in 2019, three employees were dismissed, and six other employees were issued with written warnings for breaching our Policy and Procedures. These steps are fully and transparently reported in our [WHO Code Compliance Annual Report](#).

In conclusion, we are genuine in our pledge to do what is right for babies, and to help the industry as a whole to improve. We thank you for your continued work in this important area and offer you Nestlé's support to the Call to Action process and to achieving optimal nutrition for all, at every stage of life.

Yours sincerely,



U. Mark Schneider
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Nestlé SA