

Comments on Briefing Paper on the Ethical Issues concerning the Marketing of Breast Milk Substitutes and other Ethical issues relating to Nestlé

1.1 In support of our view we would quote:

The Code Document, Annexe 3 page 34 which states... "Products other than *bona fide* breast milk substitutes, including infant formula, are covered by the Code only when they are "marketed or otherwise represented to be suitable... for use as a partial or total replacement of breast milk." Thus the code's references to products used as partial or total replacements for breast milk are not intended to apply to complementary foods *unless* these foods are actually marketed - as breast milk substitutes, including infant formula, are marketed - as being suitable for partial or total replacements for breast milk. So long as the manufacturers and distributors of the products do not promote them as being suitable for use as partial or total replacements for breast milk, the code's provisions concerning limitations on advertising and other promotional activities do not apply to these products."

1.3 The WHO clarified this many years ago as follows.. "WHO has made no statement quantifying the impact on either morbidity or mortality of infants being fed on bona fide infant formula, ie breastmilk substitutes manufactured in accordance with the relevant standards of the Codex Alimentarius. WHO has estimated that the number of infant deaths could be averted annually through effective breast-feeding promotion and this irrespective of the breast milk substitutes used to feed them or, for that matter, the feeding utensils employed for this purpose."

WHO November 19th 1992

1.4 The aim of the Code (Article 1) also recognises the role of breastmilk substitutes:

"The aim of this Code is to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proposed use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution"

1.5 Nestlé did not offer free formula to UNICEF

1.6 Please note that more infant formula is sold in Belgium with 10 million inhabitants than in the whole of sub-Saharan Africa.

1.7d With reference to Nestlé compliance with the Code in Africa please find comments from governments attached.

We believe in continuous improvement of our marketing practices. In this respect to tighten our procedures further we will shortly be reissuing the Nestlé Instructions to include the latest WHO recommendations . We are also working on an additional, substantial, management procedure to further improve the monitoring of our own practices. More details will be issued next year.

2.4 As an infant food manufacturer, we have a clear responsibility to monitor our marketing practices' compliance with the WHO Code. Nestlé takes this responsibility very seriously and on an ongoing basis we have developed a range of internal mechanisms to assure Code compliance.

- ❑ Detailed instructions on WHO Code implementation;
- ❑ Education and information for our staff;
- ❑ Regular audits of our marketing practices relating to infant formula;
- ❑ Responding to requests from health authorities for assistance towards promotion of breast-feeding and raising Code awareness;
- ❑ Seeking governments' assessment of our Code compliance;
- ❑ Commissioning independent external audits where appropriate, in cases of multiple, broad-scale allegations about a Nestlé company's adherence to the WHO recommendations on infant formula marketing
- ❑ An internal ombudsman scheme allowing any Nestlé employee to raise concerns about Code compliance confidentially;
- ❑ Finally, Nestlé is the largest private distributor of the official WHO Code document in the world.

We continuously evaluate and seek to strengthen these mechanisms in order to fulfil our obligations

2.5 Please see pages 34 and 35 of the Code:

"The second main question before the Executive Board was whether it should recommend the adoption of the code as a recommendation or as a regulation. Some Board members expressed a clear preference for its adoption as a regulation in the sense of Articles 21 and 22 of the WHO

Constitution. It became clear, however, that, although there had not been a single dissenting voice in the Board with regard either to the need for an international code or to its scope or content, opinion was divided on the question of a recommendation versus a regulation.

It was stressed that any decision concerning the form the code should take should be based on an appreciation of which alternative had the better chance of fulfilling the purpose of the code – that is, to contribute to improved infant and child nutrition and health. The Board agreed that the moral force of a unanimous recommendation could be such that it would be more persuasive than a regulation that had gained less than unanimous support from Member States.....”

2.5 Nestlé believes the Code is a recommendation to all countries (WHO Code Para 11.1). However, we voluntarily apply it in developing countries due to their economic, social and hygienic circumstances. In developed countries where these circumstances differ substantially, we respect government decisions on public health policy. Thus in developed countries we abide by government legislation, as per the explanation in your briefing note.

In connection with the Scope of Code. This is clearly stated in Annex 3 (see 1.1 above)

Please also see the following professional legal opinion on the WHO Code.

Professor Jean Michel JACQUET, of the Graduate School of High International Studies in Geneva, wrote a memorandum of legal opinion for the purpose of clarifying various questions relating to the Code.

The questions were raised with particular regard to the “universality” and “scope” of the Code. The conclusions of Professor Jacquet’s analysis are:

1. *Applicability of the WHO Code*

-The WHO Code is a recommendation from the World Health Assembly to Member States for taking regulatory measures to put it into practice at a national level, as the Member States may deem it appropriate to their social and legislative frameworks and to their development objectives. Universality is thus something

the WHO Code only aspires to.

-The Member States are invited to create a legal status inspired by the WHO Code and to monitor the enforcement of the national measures in co-operation with other addressees (healthcare staff, manufacturers, NGOs, etc.), which can inform the national authorities about compliance.

- In countries where no national measures reflecting the WHO Code are adopted, manufacturers can apply the Code on a voluntary basis: only when manufacturers decide to do so would the Code become directly applicable to them. Non-State Actors can intervene by requesting national authorities to issue norms and/or draw attention of manufacturers on alleged malpractices.

2/ Interpretation of the WHO Code

-Only State institutions have the legitimacy to interpret the Code, as implemented by the State. In case of divergence on the interpretation of the Code between Non-State Actors, only a neutral body, vested with judicial authority, can decide if an interpretation is correct or not in a given national context.

-States can refer to Articles 2,3 and Annex 3 of the Code to establish the scope of their national implementations. States have however authority to go beyond the Code's recommendations, or be less strict.

In connection with the provision of samples to health professionals, our policy is very restrictive and only 2 items of new or revised infant formulae are allowed per health professional, one time only.

3.4 Nestlé's share of the global market is approximately 18.6 per cent, not 40 per cent. (Source: UBS Warburg)

3.4a) In response to the specific allegations:

Argentina

The web-page referred to is not contained in a Nestlé Website. Moreover, internet sale pages from retailers are like any other trade channel. As such, it can show and sell infant formula products using a picture to help the buyer recognise the item they want to purchase; just as if they were placed in the shelves in a

retail store. No information about the product or its use is provided in the web page

We need, and have requested more information to pursue the allegation that mothers received free samples of Nan Soya in health facilities. As a result of the additional information provided to us, we were able to track this allegation further, however, we did not find any proof of samples being given by Nestlé Argentina to mothers in the "Centro de Salud Las Americas", as the WHO Code and Nestlé policy prohibits the distribution of breast-milk substitute samples to mothers in health facilities.

The ad in the professional journal and the leaflets on NAN are in total compliance with the WHO Code and local legislation, including the important notice and the breast milk support statement required. They are intended for Health professionals only and are not misleading in any way.

Nestlé supported the Argentinean Paediatric Congress in 2003, as we have done for many years. This is in line with the WHO Code and local legislation. During the event we conducted activities intended to inform only health professionals about our NAN 1 and NAN 2 infant formulas, strictly following WHO Code's article 7. During these events we distributed scientific materials about those products containing all required information. The cups and the calendars contained information related to complementary foods, which are not considered as breast milk substitutes neither by the WHO Code nor by local legislation. No promotional activities like those mentioned were carried out in relation to infant formula products.

Switzerland

The advertisement shows follow-up formula as well as complementary foods and was placed by Migros for the introduction of the Nestlé product range. Swiss authorities as well as the Codex Panel view such an activity as being in compliance with the existing Swiss Code

Luxembourg

The accusation refers to an advertisement in "Eltern", a German parent's magazine. The product, BEBA Sensitive, belongs to the FSMP category (food for special medical purposes). The health claim is substantiated by clinical trials and proven. The advertisement and the information is in full compliance with the EU Commission Directive 91/321/EEC and German legislation

Thailand

We have commissioned an external audit of Nestlé Thailand's

marketing practices relating to breast milk substitutes. These findings will be published in due course.

Armenia

In Armenia, Nestlé works with an importer/distributor, who has signed an agreement with Nestlé clarifying that they have to comply with the WHO Code in the same way as Nestlé. According to the picture, NAN infant formula is displayed together with complementary foods. The poster also refers to complementary foods as well, which is not in keeping with Nestlé Instructions. As IBFAN has not clarified where this happened it is impossible to say whether it was done as an initiative by the shop or by the distributor. Anyhow, Nestlé contacted the distributor immediately and addressed the situation.

The suits with the corporate Nestlé logotype, were distributed in health care facilities during a short period in 2002 by the local distributor before it was stopped by Nestlé. The suits were then used as a pack promotion of infant cereals, which are complementary foods not marketed as breast-milk substitutes, in 2002 and 2003. This activity is in keeping with the WHO Code.

The leaflet, for medical professionals only suggests that "new NAN is closer to the reference" than competing formulas. It does not say that NAN 1 is better, or similar to breast milk. In fact it acknowledges that breast milk is best. The wording is in full compliance with the WHO Code.

China

More detailed information is needed to assess this allegation as we fail to understand what activities precisely are criticised by IBFAN under the term "promote". In actual fact Nestlé China does not promote infant formula to consumers at retail level which means no price discount, no gift for the purchase of an infant formula. We do use milk merchandisers to ensure the availability in shops of our milk products for older children and adults, i.e products which are not breast milk substitutes. Gifts may be given, but only in relation to the purchase of Nestlé infant cereals or other products that are not breast milk substitutes. All our sales representatives receive regular training on the marketing restrictions stemming from the WHO Code and know that promotion of infant formula at point of sales is not allowed. They may carry out only activities that are not prohibited by the WHO Code or the local legislation such as checking stock rotation and ensuring clean maintenance of infant formula packs on shop shelves.

In a local context where fake breast milk substitutes abound, it is important for Chinese consumers to be able to rely on strict quality assurance. All Nestlé products sold in China include a red band with the phrase "Choose Quality, Choose Nestlé," which reflects the quality commitment of Nestlé China vis-à-vis its consumers. Emphasising strict quality standards is not in any way contravening the WHO Code (cf its Article 10: "The quality of products is an essential element for the protection of the health of infants and therefore should be of a high recognised standard".) As for the health benefits related to the low phosphorus content in our infant formula range, they can all be scientifically substantiated.

Columbia

We have requested more specific information on where and when these conferences took place. However, Nestlé de Colombia support continuing scientific education and conferences, as requested by health institutions. None of them are promotional in nature/ Support to scientific education is not prohibited by the WHO Code. Mouse pads, note pads and pens only bear the Nestlé or infant Cereal logo, which is allowed under the WHO Code.

Costa Rica

We have requested more specific information on where and when these conferences took place. However, contribution to scientific activities, when requested by a health institution, is permitted by the WHO Code (article 7.5). As to the low price gifts as date books, they are given exclusively to participating doctors as courtesy gifts at the events. This is in line with WHO Code articles 6.8 and 7.3

Indonesia

The WHO Code allows manufacturers to give inexpensive items of professional utility to health workers. Company name and corporate logo may be shown on those items, but not infant formula brands or logos. Agendas given by Nestlé Indonesia to medical contacts contain a section dedicated to scientific information. The company never gives such items to mothers.

Finland

The text: "The amino acid composition of the product has been renewed. That is why we have been able to reduce the amount of protein which is now closer to the protein level of breast milk" was the outcome following several conversations with National Food Authority in 2001. In November 2003 the label was reviewed and the wording is now shortened to "The amino acid

composition of the product has been renewed". At the same time Nestlé Finland suggested to change "NAN infant formula can be used from birth as an addition to breast milk or to substitute it" to "NAN infant formula can be used from birth when the child is not breastfed" to follow even more strictly the decision made by the Finnish Health Ministry. Also this change was accepted by the Finnish Food Agency in November 2003.

South Africa

The text on the label does not compare the formula with breast milk. It qualifies the composition of the product as containing all vitamins and minerals required by an infant for growth and development, compared to the standards of the United Nations' Codex Alimentarius.

- 6.4 No brands are mentioned in the educational publication Key Skills in Context. The content, which is balanced is attached.