

23. A Review of Nestlé and Breast Milk Substitutes Marketing

A report by the Joint Advisory Committee on the Ethics of Investment (JACEI) to the Methodist Conference

1. Introduction

- 1.1 The history of the engagement of the Methodist Church on work around infant formula goes back to the 1980s. In 2005, after an extensive period of consultation involving both Nestlé and Baby Milk Action, the Joint Advisory Committee on the Ethics of Investment (JACEI) advised that given the evidence of responsiveness from Nestlé to campaign pressure and investor dialogue JACEI could not preclude investment. JACEI acknowledged that the remaining areas of ethical concern relating to marketing and promotion of breast milk substitute issues could be appropriately addressed through constructive engagement with Nestlé. In receiving this report the Methodist Conference directed that, should the Central Finance Board of the Methodist Church (CFB) decide to invest in Nestlé, JACEI should establish a mechanism to monitor Nestlé's ethical performance and report annually to the Methodist Conference.
- 1.2 JACEI members, with support from the Methodist Church and CFB, have met usually on two occasions each year with Nestlé staff. JACEI has sought clarity from Nestlé on aspects related to breast milk substitute marketing and published an account of its engagement with Nestlé within the JACEI report. Staff have on occasions sought the advice of external experts and JACEI has reviewed reports and media articles.
- 1.3 In 2014 the Conference accepted a reply to a Memorial (shown below) presented by the Lancashire District Synod directing that a report be brought to the Methodist Conference in 2015 to include an assessment of the company's performance, taking into account recent reports from agencies such as Save the Children and UNICEF Laos. This report responds to that request and offers a broad perspective on developments since 2006.

M45 Nestlé

The Lancashire District Synod (R) (Present: 115; Voting: 105 for, 0 against) wishes to draw attention to the fact that since 2006 Methodism has profited directly from a million pound investment in Nestlé. This company routinely violates baby milk marketing requirements internationally whilst claiming to be fully compliant with them.

The CFB have said (*Journeying Together*, 2007) "investment in Nestlé could provide an appropriate background for engagement with the company on this important issue" and that "JACEI will continue to monitor the performance of Nestlé, meet with senior executives and report to Methodist Conference."

Whilst the CFB and JACEI undoubtedly excel in many areas, we are concerned that recent reports to the Conference in 2013 failed to clearly detail the actions or promises of action that meetings with Nestlé executives have brought about, given that the CFB has agreed that engagement with the company is an appropriate way to bring about change. We feel it is important at this stage that the Conference hears about any change in practice that our engagement as an investor has brought about. We are also concerned that JACEI failed to make reference in its report to the Conference in 2013 to recent and significant reports from Save the Children, UNICEF Laos and others which detail examples of aggressive marketing by Nestlé.

Lancashire District Synod recognises that Methodist members may be employed by Nestlé and may not be comfortable taking action. Nevertheless, it is our view that supporting Nestlé through investment is not bringing about the change in practice we should be expecting.

The Lancashire District Synod therefore respectfully requests the Conference to direct the CFB and JACEI to thoroughly review and to report upon the current position with regards to our investment with Nestlé, our hope of change in practice through engagement and to take into account independent reports from agencies such as Save the Children and UNICEF Laos who are reporting more fully on the practices of Nestlé around the world.

Reply

The Conference thanks the Lancashire District Synod for its memorial. In 2005 the Joint Advisory Committee on the Ethics of Investment (JACEI) stated its view that there was sufficient evidence from Nestlé of responsiveness to campaign pressure and investor dialogue to make engagement an appropriate approach for the Central Finance Board. In 2006, in a reply to a memorial from the Birmingham District Synod, the Conference directed JACEI to keep concerns related to Nestlé under review and to report to the Conference on meetings held with the company. Summaries of discussions with Nestlé have been reported to the Conference each year since and are available at www.methodist.org.uk/mission/public-issues/ethical-investment/nestl%C3%A9-investments.

One example of the influence that the Methodist Church has had as an investor is in persuading Nestlé to participate fully in the FTSE4Good process. This has independently verified Nestlé's performance in accordance with the FTSE4Good criteria for the marketing of breast milk substitutes. The verification process has so far been carried out in four countries by PricewaterhouseCoopers and the results have been published and disclosed. This process has resulted in further dialogue with the company at senior levels. Members of the Central Finance Board of the Methodist Church and the Joint Public Issues Team have been represented on a panel of stakeholders convened to review this process.

JACEI has continued to assess the concerns related to the marketing of breast milk substitutes. Whilst reports of ongoing concerns are noted, JACEI does not consider that there is sufficient evidence to cause the conclusions arrived at by the 2006 Conference to be revisited.

JACEI has also engaged the company in discussion of a number of other areas including cocoa production and forced labour, water usage, the nutrition and wellness agenda and human rights assessment.

The Conference accepts the suggestion of the Lancashire District Synod that a further report be brought by JACEI to the 2015 Conference that includes an account of reports from independent agencies such as Save the Children and UNICEF on Nestlé's performance in this area.

2. Implementation of the International Code in national legislation

2.1 According to figures provided by the International Code Documentation Centre (ICDC) adoption of the WHO International Code of Marketing of Breast Milk Substitutes into legislation has continued to be slow since 2006.¹ 118 countries have implemented the code in legislation in some way. 35 have implemented *most* of the provisions; another 35 have implemented *many* provisions while 48 countries have implemented *a few* provisions. Even

¹ A part of the International Baby Food Action Network (IBFAN), www.ibfan-icdc.org/

where legislation has been enacted there may be a lack of regulations to enable the law to be implemented effectively or little capacity adequately to support and train health inspectors, health staff and members of professional bodies to enable compliance to be enforced.

Consequently there remains a pressing need to raise the standard of performance within the baby food industry with respect to the International Code.

3. Infant formula companies and developed countries

- 3.1 Many agencies working in infant nutrition regret the distinction made by infant formula companies between developed and developing countries (typically described as 'low-risk' and 'high-risk' countries). UNICEF's growing Baby Friendly Initiative supports the health sector in setting policy that promotes breastfeeding and asserts that the International Code and its subsequent World Health Assembly Resolutions are intended as a minimum requirement in all countries. In developed countries most companies follow national legislation rather than the International Code but the two frequently differ.
- 3.2 For example in the UK, according to UNICEF, while the International Code considers follow-on formula (ie milk intended for babies over six months) as a breast milk substitute, UK law does not. UK guidelines permit companies to advertise their brand name and logos on TV and in magazines.² UK television advertisements for Nestlé's SMA Toddler Milk (for one year and above) would appear to conform to the UK guidelines on the advertising of follow-on formula, satisfying provisions in the guidelines that seek to avoid the risk of confusion between infant formula and follow-on formula. However, some might argue that such actions are in contradiction of the International Code and subsequent World Health Assembly resolutions³ and therefore contrary to the obligations of infant formula companies even though UK guidelines are explicitly permissive in this respect.⁴

4. Nestlé policy and practice in developing countries

- 4.1 Nestlé categorises 152 countries as higher risk in terms of infant mortality and malnutrition and in these contexts apply their own operating instructions which are based on the International Code. The fundamental disagreements around the compatibility or otherwise of Nestlé operating instructions with the International Code have changed little since the report to the Methodist Conference in 2006. However Nestlé's Operating Instructions were revised in 2010 and now permit the advertising of formula milk designed for babies older than one year even when the brand name is the same as that for infant formula. Such advertising was denied under the previous Operating Instructions and the change opens the door to promotional activities of infant formula brands, the proviso being that it is clear that product featured in the advert is the version designed for babies of one year and above.
- 4.2 Since 2006 the interaction of many companies with health workers is likely to have increased given the growing market for infant formula, particularly in Asia. Most infant formula companies are involved in some way with promotion of infant formula brands to health practitioners and midwives. Studies have shown that midwives and other primary health care

² Department of Health Guidance Notes on the Infant Formula and Follow-on Formula Regulations 2007

³ UK Code Violations 2013, Baby Feeding Law Group/Baby Milk Action
archive.babymilkaction.org/pdfs/lwtduk2013.pdf

⁴ See Para 47 of the Department of Health Guidance Notes 2007

workers are highly influential in the decision of mothers to breastfeed. Save the Children's research in Pakistan found that almost one-third of health professionals interviewed said they had been visited by a representative of Breast Milk Substitutes (BMS) companies. Among these health professionals, 74% said they had been visited by Nestlé.⁵ 2% of health facilities surveyed reported receiving free samples of formula milk and Nestlé was one of the companies reported to have provided free samples. One-fifth of health professionals surveyed said they had received gifts from representatives of BMS companies. These included prescription pads, calendars, pens and note pads. Over half of these gifts were reported to have been Nestlé-branded. These non-formula products are provided by Nestlé in conformity with Nestlé Operating Instructions that make reference to article 6.8 of the International Code in this respect.⁶

- 4.3 The use of health care facilities and their staff as a means for promoting infant formula remains a valid concern. The market research body, Euromonitor, recommends that infant formula companies highlight the protective qualities of breast milk in order that local health authorities come to regard them as valid partners in promoting infant nutrition and health. There is an obvious concern that this interaction with company personnel (even when the 'breast-feeding is best' message is present) may influence health workers' perceptions of infant formula or cause midwives, when advising mothers, to recommend a particular brand. Euromonitor suggests that the relationship between companies and health workers could be used "to gain access to public health channels such as hospitals and surgeries, which are very important to baby food sales in developing countries". This acknowledgement illustrates the conflict of interest that still exists. Companies must respect article 6.2 of the Code that states, "No facility of a health care system should be used for the purpose of promoting infant formula or other products within the scope of this Code".

5. **FTSE4Good Breast Milk Substitutes (BMS) marketing criteria and Nestlé's inclusion**

- 5.1 For many years JACEI, in its dialogue with Nestlé, encouraged the company to engage with FTSE4Good. The FTSE4Good Index is a tool for investors to identify companies that demonstrate good performance in Environmental, Social and Governance (ESG) practices. The FTSE4Good Breast Milk Substitutes (BMS) verification is a mechanism for verification of performance that has the support of a range of stakeholders although not all are satisfied with the benchmarks that it sets. For many years no infant formula companies met the FTSE4Good inclusion criteria in relation to breast milk substitute marketing.⁷ In 2010 FTSE4Good inclusion criteria were changed to reflect the common but controversial practice in the industry in distinguishing between high risk and low risk countries with respect to the International Code. In 2011 Nestlé was accepted into the FTSE4Good index.
- 5.2 The FTSE4Good inclusion criteria for the Marketing of Breast Milk Substitutes require that manufacturers are responsible for monitoring their marketing practices according to the "*principles and aim of the Code*". In high risk countries the criteria require "*that the adoption*

⁵ Superfood for Babies, Save the Children, 2013,
www.savethechildren.org.uk/sites/default/files/images/Superfood_for_Babies_UK_version.pdf

⁶ Nestlé's Operating Instructions state that "these materials should be inexpensive, i.e. the value would not constitute an inducement to prescribe formula products to the detriment of breast-feeding" although it is probably difficult to determine what might constitute a material inducement or encourage positive perceptions of a particular company.

⁷ With the exception of Gerber in 2006 when it was owned by Novartis and before it was bought by Nestlé.

and adherence to the Code is a minimum requirement ... and where national legislation or regulations implementing the Code are more demanding than the Code, the company will follow the national measures in addition to the Code". The inclusion criteria also require "explicit confirmation that there will be no advertising or promotion of infant formula, follow-on-formula products for the use of infants under the age of 12 months, or delivery products (i.e. teats and bottles) in these countries. "

- 5.3 Since Nestlé's inclusion in the index, FTSE4Good has carried out four verification assessments conducted by PricewaterhouseCoopers. Each annual assessment has been conducted in two countries. The Nestlé offices in those countries were typically given notice of the assessment team's arrival only one to two weeks in advance. Nestlé's practice in the countries under examination is assessed on the basis of the company's policies and Operating Instructions. The outcome of assessments is available on the FTSE4Good website⁸ and has generated correspondence between FTSE4Good and Nestlé's Chief Executive Officer. Staff of the Joint Public Issues Team and the Central Finance Board of the Methodist Church have engaged with FTSE4Good after each round of verification and offered suggestions on the process.
- 5.4 Both the criteria and verification process of FTSE4Good has room for improvement (for example, with respect to the criteria, one improvement would be the extension beyond 12 months of the age range of products for which there is a prohibition on marketing). The FTSE4Good BMS criteria are due to be reviewed five years after introduction. This is in line with the FTSE4Good approach for other criteria. It should be noted that FTSE4Good criteria in areas beyond marketing of breast milk substitutes have often been made more challenging during periodic review reflecting a desire to see continued progress in performance on environmental and social impacts. FTSE4Good cannot perform the role of the sole arbitrator on Nestlé's performance but provides a helpful contribution through its verification work. Four years after its inclusion Nestlé remains the only company to meet the criteria of the FTSE4Good Index, and therefore the only company to be subject to independent verification in relation to the FTSE4Good BMS Criteria.

6. IBFAN Monitoring

- 6.1 The International Baby Food Action Network (IBFAN) is a network of groups across 168 countries and includes Baby Milk Action in the UK. The IBFAN International Code Documentation Centre publishes the report *Breaking the Rules, Stretching the Rules* every four years; the latest published in 2014. The 2014 report has a 42-page section on Nestlé in which evidence is provided to support IBFAN's critique around the following:
 - discrepancies between Nestlé's Operating Instructions and the International Code and subsequent World Health Assembly (WHA) resolutions
 - FTSE4Good – a critique of the Inclusion Criteria
 - use of logos and icons
 - the acquisition of Pfizer's Wyeth Nutrition business
 - affiliation to trade bodies
 - promotions in health facilities to health workers
 - marketing of complementary foods.

⁸ www.ftse.com/products/indices/F4G-BMS

6.2 Nestlé is quoted as saying that 90% of the alleged violations in the 2014 report comply with Nestlé's policies.⁹ Nestlé states that in 24 instances there is non-compliance with company policy; 8 had already been addressed, while the company would take forward the remaining violations.¹⁰ These include 6 violations carried out by independent companies with which Nestlé does not have a relationship but to whom they will be writing to request that they cease these activities.

7. Other monitoring and research

- 7.1 There are some promising developments that seek to improve the practice of infant nutrition. The Scaling Up Nutrition (SUN)¹¹ movement is operational in 54 countries and unites people from governments, civil society, the United Nations, donors, businesses and researchers in a collective effort to improve nutrition.
- 7.2 The Access to Nutrition Initiative (ATNI) provides a scorecard approach to assessment of food companies in relation to health and nutrition. Infant formula represents only one aspect of overall performance and only 5 out of 22 companies have an involvement in infant formula. Currently the assessment in this area relies heavily on IBFAN data and therefore all are advised that there is room for improvement due to their failure to fully implement the International Code. The ATNI will seek to ensure development of a robust approach to field assessment of companies' marketing practices for breast-milk substitutes for future versions of the Index, including through any new appropriate assessment initiatives or approaches that may emerge from other actors.
- 7.3 The Baby-Friendly Hospital Initiative is a global programme by UNICEF and the World Health Organization (WHO) to ensure that all maternity centres and hospitals protect and promote breastfeeding. The centres implement baby-friendly policies, including policies designed to reflect a full implementation of the International Code constraining some of the activities of infant formula companies.
- 7.4 WHO is establishing a Network for Global Monitoring of the International Code of Marketing of Breast-milk Substitutes (NetCode) with UNICEF, International Baby Food Action Network (IBFAN), Helen Keller International (HKI), and Scientific Committee for Food (SCF) to strengthen code monitoring activities. These and other potential developments could, together, help to provide incentives for improved practice in the infant formula sector and encourage the development of clearer national and global regulations and guidelines.

8. Some observations and conclusions

- 8.1 Since 2006 Nestlé has engaged well with JACEI on this issue and has been helpful with regard to specific challenges. If anything, openness and dialogue has improved in recent years. In January 2014 Nestlé instigated the "Tell Us" facility on their website enabling any person,

⁹ www.babymilkaction.org/archives/358

¹⁰ www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/response-to-bma-14-october-2014.pdf

¹¹ scalingupnutrition.org/

anywhere to present to the company accounts of actions¹² that might be considered in contravention of the International Code.

- 8.2 Some contraventions arise through the actions of distributors or retailers. The global growth of the infant formula market and shortages of trusted brands in markets such as China would appear to be fuelling an increase in cross border trade which poses particular challenges for authorities and companies alike. This suggests the need for a global multi-stakeholder approach to address the challenges. There are opportunities developing to press for measures that will raise the standards of all companies across the industry, involving governments and health practitioners in the process.
- 8.3 Nestlé's recent acquisitions have consolidated its position as the global leader in the infant formula and baby food market. Nestlé has a 23% share of the baby food market, followed by Danone which, since acquiring Royal Numico, has 14%. Mead Johnson is third with 11% of the global market.¹³ With respect to breast milk substitute marketing, Nestlé in some respects performs better than other companies in the sector and remains open to dialogue. There is an urgent need to press for measures that will raise the standards of all companies across the industry, involving governments and health practitioners in the process. Meanwhile JACEI is of the view that continued active engagement with Nestlé represents one appropriate approach among many to give voice to the concerns of the Methodist Church and its members.

*****RESOLUTION**

23/1. The Conference received the Report.

Appendix

Developments related to Nestlé since 2006

- In 2007 Nestlé bought the baby food company Gerber for a reported \$5.5 billion. Gerber has a significant presence in the US baby food market.
- In 2010 Nestlé revised its policy and Instructions for Implementation of the WHO International Code of Marketing of Breast-milk Substitutes.
- In 2011 Nestlé was accepted into the FTSE4Good index.
- In December 2012, Nestlé announced its completion of the acquisition of Pfizer Nutrition for US\$ 11.85 billion and the infant formula brand SMA giving Nestlé a presence in the UK market as well as in the strategic and growing market in China. Nestlé stated that "Pfizer Nutrition's strong brands and product portfolio, together with its geographic presence, complements Nestlé's Infant Nutrition business. 85% of its sales are in emerging markets, many of them with large, fast-growing populations. Building on our growth-focused strategy, global presence and pioneering research and development, the newly enlarged business will enhance our ability to become parents' trusted partner, offering them a wider choice of nutritious food to ensure their children make a healthy start to a healthy life."
- 2013 Public disclosure of the first FTSE4Good verification assessment (of Nestlé business in Morocco and Laos).

¹² These accounts must be backed by evidence for the company to be able to follow them through.

¹³ Euromonitor, *Safety First: Global baby food opportunities and challenges to 2015*, February 2011