

## MINUTES

### Joint Advisory Committee on the Ethics of Investment

Extraordinary meeting held to discuss the ethical suitability of Nestlé as a potential CFB investment. Held on Monday 22 November 2004 at Methodist Church House.

- Present:** Revd John Swarbrick (in the Chair); Dr David Clough; Ms Anthea Cox; Mr Alan Emery; Mrs Stephanie Holmans; Mr Kumar Jacob and Mr William Seddon.
- In Attendance:** Mr Russell Sparkes (Secretary); Mr Stephen Beer and Mr Steve Hucklesby.
- Independent Expert:** Ms Judy More (Dietician and former Chair of the Paediatric Group of the British Dietetic Association).
- Observer** Dr Andrew Bradstock (United Reformed Church Secretary for Church and Society).
- Baby Milk Action:** Mr Mike Brady (Campaigns Co-ordinator) and Ms Gabrielle Palmer (nutritionist based at the London School of Hygiene and Tropical Medicine)
- Nestlé UK:** Ms Hilary Parsons (Head of Corporate Affairs); Ms Beverley Mirando (Senior Policy Advisor) and Mr Sunil Sinha (Emerging Markets Economics).

#### 1. Purpose of Meeting

The Chair commenced the session by describing the purpose of the Meeting. He reminded those present that the objective was to enable the Methodist Church through its Joint Advisory Committee on the Ethics of Investment (JACEI) to assess the ethical suitability of Nestlé as a potential investment for Methodist funds and to advise the Central Finance Board of the Methodist Church accordingly. It was not to try and adjudicate on the complex and contentious issue of the role of breast milk substitutes.

It was to be a consultation exercise that would pay particular attention to Nestlé's performance with respect to the International Code of Marketing of Breastmilk Substitutes, but would also consider other aspects of Nestlé's business before arriving at a conclusion. The Chair also thanked the CFB for producing a detailed and comprehensive ethical briefing note on the company, which was a great help in promoting informed debate.

#### 2. Procedure of Meeting

The Chair then described the planned procedure for the Meeting, noting that this was the first time an extraordinary meeting of the JACEI had ever been held outside the normal schedule of meeting dates and with the specific objective of considering a particular company. The Meeting was planned along the lines of the Select Committee of the House of Commons, and would operate as described in the paper *Consultation with Nestlé and Baby Milk Action, October 2004* and previously agreed by all parties. A request by Baby Milk Action (BMA) to tape-record proceedings was refused.

The Meeting would function as an expert panel consisting of members of JACEI itself and the Staff Preparation Group. To this would be added an independent expert on the subject, Ms Judy More, a paediatric dietician recommended by the British Dietetic Association, and an observer from the United Reformed Church, Dr Andrew Bradstock who had wide experience of the subject. (BMA queried the involvement of Ms More, noting that she worked as a consultant for SMA Nutrition, a company with a criminal conviction for illegal advertising of infant formula in the UK and a company against which BMA campaigns because of its aggressive marketing practices around the world, which have seen it censured by the South African Advertising Standards Authority. BMA decided to bring this objection to the attention of the panel, but to continue with the consultation.)

Both BMA and Nestlé had already made a written response to the CFB briefing paper and answered the list of questions presented prior to the Meeting. In the morning BMA would give a thirty-minute presentation to the panel after which their delegation would withdraw while the panel considered their evidence. A list of questions would be drawn up and the BMA delegation would be invited to respond to them when they rejoined the Meeting. The Nestlé delegation would go through an identical process in the afternoon.

It had been agreed with both parties that BMA and Nestlé would not be in the building at the same time. Hence BMA would speak in the morning, and Nestlé in the afternoon. The Meeting would conclude with a summary session, at which it was hoped some conclusions would be reached.

### **3. Baby Milk Action Presentation**

#### **3.1 Overview of Baby Milk Action's Position**

Mr Brady began his presentation by thanking the Committee for inviting BMA to address it. He tabled a number of BMA statements and other printed background material to support BMA's case. He stated that BMA felt the consultation was a useful opportunity to try and set the record straight and bring clarity to an issue that BMA believed was deliberately muddled up by Nestlé. Indeed he accused Nestlé of 'extreme dishonesty' on the subject. He queried how much could be achieved in the short time and said BMA has proposed to Nestlé that a public tribunal be held before an independent panel of experts, over several days if necessary, where experts could be called, to ascertain the truth. Nestlé had so far rejected this idea and he invited the Methodist Church to add its voice to those calling for Nestlé to accept the proposal.

He claimed that Nestlé's strategy was to portray the issue as purely a dispute between Nestlé and Baby Milk Action. However, he believed that this was false. Baby Milk Action's role was simply to monitor and defend the International Code of Breast-Milk Substitutes and subsequent, relevant Resolutions adopted by the World Health Assembly (WHA) and that Nestlé's failure to comply can be evaluated objectively. He provided a document entitled *Nestlé and the International Code: Where do they Differ*, giving a legal analysis of the difference between Nestlé's policies and the Code and Resolutions and a letter from UNICEF's Executive Director, Carol Bellamy, to Nestlé's Chief Executive Officer, Peter Brabeck-Letmathé, setting out some of the areas where Nestlé's policies are out of step with the Code and Resolutions. All but one of the issues in the November 1997 letter remain unresolved and the one where there has been progress, the age of use on complementary foods, took a nine year international campaign before Nestlé agreed to make changes, Mr Brady explained. Mr Brady pointed out that BMA had made a complaint to the UK's Advertising Standards Authority (ASA) after Nestlé claimed in an anti-boycott advertisement that it markets infant formula

'ethically and responsibly', and in 1999 the ASA had upheld all BMA's complaints after a two-year investigation.

### 3.2 BMA's opinion of the Status of Code

The second area where he wanted to set the record straight related to the Code, which applies globally and has status in international law since the adoption of the Convention on the Rights of the Child - indeed, he said, the UK government has been instructed by the United Nations Committee on the Rights of the Child to implement the Code as it has so far failed to do so fully. He said it was not for Nestlé and Baby Milk Action to negotiate over interpretation of the Code, such questions were addressed by subsequent Resolutions adopted through the World Health Assembly. He quoted the text of the Code and Resolutions to show that these are a minimum requirement to be implemented in their entirety by all countries and that companies are required to abide by them independently of government measures.

He noted that UNICEF is mandated under Article 11.1 of the Code to provide advice on interpretation and distributed to the panel a letter from UNICEF's Legal Officer on one disputed area, whether companies are permitted to make contact with pregnant women and mothers if this is for products other than infant formula, such as complementary foods, which Nestlé argues is the case. UNICEF said in its letter to Mr Brady that 'The prohibition is absolute'. He also aimed to refute Nestlé's repeated assertion that the Code is simply a recommendation to governments and had no authority if not implemented in national law by referring to Article 11.3 of the Code, which states:

"Independently of any other measures taken for implementation of this Code, manufacturers and distributors of products within the scope of this Code should regard themselves as responsible for monitoring their marketing practices according to the principles and aim of this Code, and for taking steps to ensure that their conduct at every level conforms to them."

### 3.3 Allegations of Code Breaches by Nestlé

The third point Mr Brady made was to rebut what he called, 'the intense public relations offensive' by Nestlé that they are marketing breast milk substitutes in accordance with Code. He referred to BMA's most recent monitoring report, *Breaking the Rules, Stretching the Rules 2004*. The report was published by the International Baby Food Action Network (IBFAN), which consists of over 200 groups in more than 100 countries. Monitoring results from 69 countries are included in the report, with over 2,000 violations documented and over 700 pictures of the companies' own materials. He claimed that this report documented in detail, and with numerous examples, how Nestlé and other baby food companies were in breach of the Code and Resolutions through dubious marketing practices and idealising their products. Idealisation means suggesting that the products are equivalent or superior to breast milk, in direct contravention of the Code. He said Nestlé was found to be responsible for more violations than any other company.

### 3.4 Defamatory Statements

Mr Brady pointed out that BMA had made statements about Nestlé that might be viewed as defamatory if they could not be substantiated. For example, he said: 'Nestlé does not tell the truth. This is not about misunderstandings or questions over interpretation. It is systematic and institutionalised malpractice'. He noted that the company, which he claimed was notoriously litigious, had never sued BMA for defamation over these claims. He argued that its failure to do so showed that it knew it would lose as BMA could substantiate its allegations, as had already been demonstrated before the Advertising Standards Authority.

### 3.5 Proper Use of Infant Formula

Ms Palmer then discussed the use of breastmilk substitutes. She noted that BMA was sometimes accused of being 'single issue' fanatics who were against the use of breastmilk substitutes under all circumstances. She pointed out that this was not true. BMA's position is that companies should abide by the International Code and Resolutions, which prohibit promotion and limit companies to providing scientific and factual information to health workers. The Code gives responsibility to health workers for advising parents and also includes labelling requirements, which are intended to benefit all mothers. The over-riding principle is that mothers have the right to make decisions on infant feeding based on correct and independent information free from commercial pressure. On the specific issue of medical need for breastmilk substitutes, she said this was over-stated as evidenced by the high breastfeeding rates in some countries. While acknowledging cultural and practical issues, she said the advantages of breast feeding were so overwhelming that breastmilk substitutes should ideally only be used in extreme cases, for example where a mother had a mastectomy and a wet-nurse could not be found or as one of the options for mothers infected with HIV.

She criticised the CFB note for stating that the main problems involving breastmilk substitutes occurred in developing countries. While the CFB had been correct to state that preparation of breastmilk substitutes in conditions of poverty was a major risk to child health in these countries, she argued that the increased risk of illness for artificially-fed infants applied in all countries. She cited a study from Dundee, which demonstrated increased risk of gastro-enteritis if infants were artificially-fed rather than breastfed and commented that in countries without the same access to health care such infants would be more likely to die.

She agreed with the point made in the CFB's note that breastfeeding was positive for children in all countries in terms of supplying babies with their mother's antibodies to defend against possible infections. However, she argued that the benefits of breastfeeding, even in developed countries, went far beyond that. These included: lowering a child's blood lipid level, which reduced the chances of heart attacks later in life; significant reductions in childhood allergies such as asthma; psychological benefits and lowering a mother's risk of breast cancer. With regard to developing countries, she referred to a *Lancet* study 'How many child deaths can we prevent this year?' which demonstrates that breastfeeding as a preventative intervention can prevent more under-5 child deaths (13%) than vaccination (7%) or provision of safe water, sanitation and hygiene (3%).

## 4. Question and Answer Session with BMA

After a brief recess, the BMA team returned for a question and answer session. The following points were discussed:

### 4.1 What is the Key Point at Issue?

In BMA's opinion, the key point at issue is that Nestlé is breaking the *International Code of Breast Milk Substitutes* and subsequent, relevant Resolutions of the World Health Assembly by improper practices such as marketing directly to mothers. They also accused it of opposing legislation to implement the Code nationally and at international fora such as the Codex Alimentarius Commission, which sets food standards.

Mr Brady added that the main thrust of BMA's work is for the implementation of the Code and Resolutions in legislation and that where this has been achieved and enforced, violations are effectively stopped and breastfeeding rates are increasing. Elsewhere violations remain widespread. In Taiwan he accused Nestlé as being one of

the companies making payments to hospitals for the right to provide free supplies of formula to mothers, a blatant violation of the Code and Resolutions. Mr. Brady commented on how Nestlé has promoted its Pelargon formula used in HIV interventions in Botswana with a pamphlet claiming that it counteracts diarrhoea, an idealizing claim that is disputed by health experts and even a member of Nestlé's own Nutrition Institute. Such claims encourage use of the formula in cases of diarrhoea.

#### 4.2 Role for Infant Formula

BMA denied that they were a 'single-issue' pressure group whose 'hidden agenda' was to prohibit the production and sale of infant formula as such. BMA stresses that the International Code and subsequent, relevant Resolutions are intended to protect mothers who artificially feed their infants as well as to protect breastfeeding. Much of BMA's work is aimed at improving labelling and composition of baby foods. In response to recent deaths in Europe linked to *Enterobacter Sakazakii* contamination of powdered formula, BMA is campaigning for better warnings and instructions, which are being opposed by the industry.

Mr. Brady also referred to work BMA has done with UNICEF on designing labels for infant formula used in pilot projects in Africa examining strategies for reducing mother-to-child transmission of HIV. Ms Palmer added that Nestle often argued that increased female participation in the workforce in developing countries necessitated the use of infant formula. She stated that this was not inevitable. If breastfeeding mothers did not have access to creche facilities and breastfeeding breaks, they could express their breast milk and store it for carers to give it to the baby as needed, even where refrigeration was not available.

#### 4.3 HIV/AIDS

The question of nursing children whose mothers were HIV positive was discussed, noting that there was risk of transmission of the virus from mother to child via breastmilk. BMA cited the comments of UNICEF that in the context of HIV the International Code and Resolutions are more important, not less. BMA referred to Resolutions adopted by the World Health Assembly and its Global Strategy on Infant and Young Child Feeding, which say the risk of HIV transmission and the risks of artificial feeding should both be considered. If replacement feeding is feasible, this is the preferred option. If not, exclusive breastfeeding is to be preferred.

Evidence from South Africa suggests exclusively breastfed infants of HIV infected mothers have no more risk of being infected than exclusively formula-fed infants. The increased risk occurs when there is mixed feeding. World Health Assembly Resolutions and the Global Strategy stress a mother should make her decision on infant feeding free from commercial pressure. The references are available on the Baby Milk Action website. (In its comments on the CFB briefing paper on the Ethical Issues Concerning the Marketing of Breastmilk Substitutes, and Other Ethical Issues Relating to Nestlé, BMA had taken issue over the quoting of a *Wall Street Journal* report which was critical of UNICEF's approach to HIV and infant feeding and said: "If you are going to refer to the Wall Street Journal article, it is recommended that to give some balance, reference should also be made to a follow-up article in the *British Medical Journal* 6 January 2001 'The milk of human kindness: How to make a simple morality tale out of a complex public health issue'.")

#### 4.4 Were BMA Prejudiced Against Nestlé?

BMA denied that they were prejudiced against Nestlé. They pointed out *that Breaking the Rules, Stretching the Rules 2004* criticised all the major baby food companies, with profiles on the 16 biggest. Nestlé was found to be responsible for more violations than

any other company and so received special attention, being the target of an international boycott launched by groups in 20 countries. Other companies were targeted with media and letter writing campaigns.

#### 4.5 Age of Complaints

The panel raised the point that many, perhaps the majority of the complaints in the *Breaking the Rules, Stretching the Rules 2004* report were quite old. BMA disputed this. The report was published in May 2004 and the monitoring results were gathered in the period January 2002 to April 2004. Mr. Brady commented that the purpose of the monitoring report was not to fulfil Nestlé's obligations under Article 11.3 - it was the company's own responsibility to ensure its activities at every level complied with the Code and Resolutions. The monitoring report was to evaluate whether companies were fulfilling their obligations.

In many cases national IBFAN groups had reported the violations already directly to Nestlé and/or the national authorities in their countries. Despite this, Nestlé head office had requested further details on many of the complaints in the report to identify where their own advertisements and materials had been placed. IBFAN had provided this (BMA left a copy of IBFAN's response with the panel). No response had since been received from Nestlé.

#### 4.6 Technical Breaches?

The panel suggested to BMA that many of the alleged breaches were highly technical and did not constitute substantive Code breaches. BMA disagreed, saying many of the violations are blatant. Mr. Brady showed a baby grow given to mothers in Armenia. This had the Nestlé Blue Bear mascot positioned in such a way that the slogan on it reads 'I love my Nestlé mum'. Under Article 5.4 of the Code, gifts to mothers are prohibited. The 'highly technical disputes' cited in the CFB briefing paper, were not seen as such by BMA, which gave detailed comments in annotated notes attempting to address the confusion. Mr. Brady did comment that the courts are where disputes over interpretation can be tested, which is why BMA works for legislation, and that Nestlé has been successfully prosecuted.

Mr. Brady commented that Nestlé Chief Executive, Peter Brabeck, claims to investigate any hint of a violation. BMA has registered violations without receiving a response or receiving an inadequate response. When Nestlé appointed an Ombudsman, BMA wrote asking for these past reports to be reviewed. No response has been received. Mr. Brady also commented that they had been unable to obtain a reply from Nestlé on where it had conducted audits of its national operations. The only audit that was publicly known took place in Pakistan, for which Nestlé contracted the company Emerging Market Economics. This was inaccurately referred to as an independent audit. When announced, BMA said it wrote to Nestlé's Head of Corporate Affairs, Hilary Parsons, offering to provide evidence to the auditors. This offer was not passed on. The auditors were instructed that they could not contact NGOs, or Syed Aamar Raza (a Nestlé whistleblower) and instead were given a list of doctors they could interview. Hilary Parsons and Nestlé Vice President, Niels Christian, visited Pakistan in advance of the audit to make preparations. The terms of reference used for the audit were Nestlé own instructions rather than the Code and Resolutions. When this was examined at a public hearing at the European Parliament in 2000, UNICEF's Legal Officer commented on some of the ways Nestlé's instructions fall short. Nestlé declined to send a representative who could respond to these issues.

The BMA delegation ended their case by saying that Nestlé deliberately set out to deceive people on this issue. They felt that a good example of this was a 180-page

hard-bound book that Nestlé's Chief Executive had sent out around the world, containing what Nestlé claimed were letters giving 'official verification' that Nestlé was complying with the Code. Mr. Brady provided a briefing paper analysing the contents of the book, showing that many letters did not refer to Nestlé's marketing practices and were simply thanking the company for attending a meeting, for example. Mr. Brady said the book had become an expensive public relations disaster for the company as it had to apologise for misrepresenting some of the letters. For example, the Danish government letter simply explained how the Code and Resolutions had been implemented in Denmark and said nothing about Nestlé's policies or practices and had been used in the book without permission.

Finally Mr. Brady wished the panel luck in their meeting with Nestlé and commented that if Nestlé contradicted information he had provided then it was most likely misleading the panel and he encouraged panellists to look closely at the documentary evidence and references he had provided. He said he didn't envy the panel in trying to get to the bottom of the issue in such a limited time and said if they are confused at the end of it, perhaps they would encourage the Methodist Church to support the call for a public tribunal where the evidence could be set out until the truth of each and every issue had been resolved. He also urged the panel in their reporting of the consultation to take care not to make statements that Nestlé could use to undermine the campaign, which, he said, is helping to save lives and prevent suffering around the world, though there is still much to do.

The BMA delegation left the building at this point.

## 5. Nestlé's Presentation

This was in three parts. Ms Parsons outlined the issues, Ms Miranda explained how Nestlé worked to market infant formula in practice, and Mr Sinha from Emerging Markets Economics described his work as an independent auditor.

### *5.1 History of Code and General Background*

Ms Parsons described infant formula in relation to Nestlé, and the history of the issue. She pointed out that Nestlé was one of the world's largest food companies. A breakdown of sales was as follows: confectionery 16%; non- alcoholic beverages 27%; ice cream 27%; other consumer products 18%; petcare 12%. Nestlé had indicated that infant formula sales were less than 2% of group turnover. She claimed that Nestlé was a leader in terms of corporate social responsibility, for example it was a founding member of the Global Compact.

### *5.2 History of Infant Formula Controversy*

Nestlé agreed that infant formula had been directly marketed to the public on a significant scale in the 1960s and 1970s. When this was done in developing countries they accepted it had resulted in some adverse health consequences, but she argued that the food industry was not alone in regretting the way it had done business in such countries thirty to forty years ago. The issue of infant formula marketing became a hot issue in the US in the 1970s as a result of a critical report by the consumer activist group *Social Audit*. This was followed by global controversy, culminating in the establishment of the Global Code by the World Health Authority in 1981.

Ms Parsons stressed that when renewed controversy broke out in the late 1980s, it was really confined to the UK through the activities of BMA and a few of its overseas supporters. She claimed that the issue was no longer controversial in the US, where it originally started in the 1970s, nor was it contentious in emerging markets where the

problems actually occurred. It was only 'live' in the UK owing to a small but highly visible and active pressure group.

### *5.3 Nature of the Code*

Ms Parsons ended her presentation by asserting that the legal status of the International Code of Breast Milk Substitutes was quite clear, i.e. it was a set of guidelines, and nothing more. In her opinion, it was up to the government of each country to implement it as they saw fit in accordance with their own local situation. She noted that the US and Canada had declined to follow the Code on the grounds that their own policies were superior. She argued that this proved that the Code was not an internationally binding legal treaty, as BMA claimed.

The Code was passed as a recommendation rather than a regulation and this is set out quite clearly in the Code document itself- indeed Nestlé quoted from this in the notes they sent before the meeting. From this you will see that the WHO Executive Board debated the issue of whether the Code should be a recommendation or a regulation (which is stronger) and came down in favour of a recommendation.

### *5.4 Role of Infant Formula in Developing Countries*

Ms Mirando explained the complex role of infant formula in developing countries. She argued that in many countries it was not a simple question of choosing between breast milk and infant formula. Many women could not breast feed full time, either because of health reasons, or due to economic pressures. In these cases the carers of a young baby often had a choice between giving it infant formula, or something much worse such as nutritionally inappropriate rice water, tea, and unpasteurised goats or cows milk.

She stressed that Nestlé never questioned that breast milk was better than infant formula. However, she did wish to make the point that when properly prepared infant formula was quite safe, and nutritionally designed to meet a young baby's needs. Hence she argued that if you banned infant formula, as she claimed BMA seemed to wish, you would be condemning babies to much inferior breast milk substitutes. She quoted surveys that among the poor of Bolivia, only 25% of women exclusively breastfed, of the rest only 6% used just infant formula, while the remaining 69% used water, tea, goat's milk etc. Similarly in India, only 31% of new mothers breastfed, with only 4% using just infant formula, and 65% other materials.

### *5.5 Female Empowerment*

Ms Mirando commended the CFB note for noting the massive rise in female empowerment that had occurred in many developing countries. She argued that this was only possible because of infant formula, and if it were banned, it would put the clock back for women workers. She agreed with the CFB note that in poor agricultural societies, where the vast majority of men and women work on the land and live nearby, breastfeeding is a relatively easy option. Once women commute to work in nearby cities, leaving their babies at home with relatives to be fed on infant formula was the only practical alternative. In such communities, crèche and nursery facilities are likely to be minimal, whilst maternity leave legislation often does not exist. She also stated that 600,000 women each year are unable to breastfeed.

### *5.6 Infant Formula Marketing in Developing Countries*

Ms Mirando concluded by claiming that Nestlé was scrupulous about abiding by the Code. This meant no public promotions or advertising leaflets aimed at the public, no free samples were given to mothers. The company even adopted a restrictive policy on the provision of free formula for evaluation by health professionals, who were only

allowed a couple of samples during their professional lifetime. In other words, communication to mothers about infant formula in developing countries was left completely up to health professionals.

She ended her part of the presentation by speaking on a personal note for a moment. Speaking as a Sri Lankan woman, she felt that it was up to developing countries themselves to decide how infant formula should be marketed in their country. She argued that there was no pressure whatsoever coming from either health professionals or governments in emerging markets to ban infant formula, and she regretted the arrogance of BMA, a small UK pressure group, telling them what to do.

### *5.7 Auditing and Supervision*

Mr Sinha from Emerging Markets Economics described the auditing and management methods used by Nestlé to ensure that it was in compliance with the Code. He stressed that he was not a Nestlé employee, but an independent auditor brought in when required. He said that the importance of infant formula marketing to Nestlé was demonstrated by the fact that the group Chief Executive, Peter Brabeck, personally supervised it. All reports of Code violations were sent to his office for assessment. Nestlé was a tightly run company, which operated its business using 150 Quality Assurance metrics. Exactly the same principles were adopted to manage and monitor infant formula sales. Nestlé was now rolling out in Africa a new management system for infant formula sales based upon ISO 9000, the global standard for checking and controlling subsidiary procedure.

Nestlé carried out annual audits on Code compliance with a sample of Nestlé companies each year. The company also investigated any substantial claim of Code violation made by external groups such as BMA. Thus a Head Office team at Vevey had exhaustively gone through the BMA report *Breaking the Rules, Stretching the Rules 2004*. It was rare for Nestlé to discover evidence that its staff had deliberately violated the Code, but if evidence of this were found, the staff concerned would suffer disciplinary action. He added that BMA's claims about improper marketing in Thailand had been investigated and found to be groundless. Although some supplies had been given to mothers, this had been done by retailers, and definitely not by Nestlé. He did accept that there had been some problems with Nestlé Pakistan, but argued that the company was working hard to put them right.

## **6. Question and Answer Session with Nestlé**

After a brief recess, the Nestlé team returned for a question and answer session. The following points were discussed:

### *6.1 Having a Good Policy on the Code Was One Thing, but How Did Nestlé Ensure Compliance?*

Ms Parson agreed that anybody could have a policy, but making sure that it worked 'in the field' was much harder. Nestlé ensured that all employees either newly recruited into its infant formula marketing department, or transferred from other areas of the company, were fully trained about the Code and the importance of abiding by it. They were all given, and tested upon, 'Nestlé's Core Business Principles'. At a more senior level, Code compliance was a feature of every infant formula manager's annual review, i.e. it would affect both his annual bonus and his chances for promotion.

### *6.2 How Independent Was EME?*

EME is a global economics consultancy specialising in developing countries. It is used by a wide range of international bodies such as the OECD and DFID. Nestlé only accounts for between 2% and 3% of turnover.

### *6.3 Explain the Marketing Claim that Perlagon (Infant Formula) Combats Diarrhoea?*

Nestlé itself has never marketed Perlagon on the basis that it combats diarrhoea. Some governments have publicised the fact that Perlagon's infant formula is better than some other infant feeds in this respect, but it certainly is not an anti-diarrhoea medicine.

### *6.4 Why Doesn't Nestlé Sue Baby Milk Action?*

They replied that the history of large corporates suing NGOs showed this to be a disastrous strategy. [Presumably they were thinking of McDonalds.] In their opinion, no matter how objectionable the accusations, they had to 'grin and bear it', as legal action only gave the NGO the additional publicity they craved.

The Nestlé delegation left the building at this point

## **7. Summary Session**

At this point Dr Bradstock left the Meeting, expressing his thanks for having been invited to observe the Consultation. There then followed a wide-ranging discussion of the events of the day. It was generally felt that despite the abundant amount of information provided by each party, and the fact that a whole day had been spent considering the issues, it was still extremely difficult to come to a clear conclusion. It was agreed that one of the factors that made this extremely difficult was the way the two opposing parties cast doubt on the veracity or accuracy of the other. BMA explicitly accused Nestlé of 'dishonesty', while Nestlé dismissed many of BMA's claims and understanding of the Code.

The Chair summed up the discussion by noting that this was a complex and difficult issue. Many of the claims and counterclaims were highly technical, and the two parties were so polarised and wary of each other that it was an onerous task for a third party to ascertain the actual truth of the case. He suspected that this meant it would be possible to continue the discussion *ad infini tem*. However the Committee did not have the resources to do so, nor was it desirable for it to devote its attention exclusively to the subject of infant formula to the exclusion of the other ethical issues that required attention. Therefore he advised that it was now appropriate to reach a conclusion.

The Chair terminated discussion by reminding the Meeting that the objective of JACEI was not to rule on the subject of infant formula, but to advise the CFB on whether it felt that Nestlé was an acceptable investment on ethical grounds. It was agreed that at the next JACEI meeting an attempt should be made to devise a framework to bring the matter to a definite conclusion.

Approved as a correct record  
16 March 2005