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Submission to the Legislative Council Panel on Food Safety and Environmental Hygiene & Panel on Health Services

Pfizer Nutrition Hong Kong's Position and Recommendations on the Development of <<Hong Kong Code of Marketing and Quality of Formula Milk and Related Products, and Food Products for Infants & Young Children>>

Pfizer Nutrition Hong Kong (Pfizer Nutrition) supports the Government's objective to promote, protect and support breastfeeding in Hong Kong. Pfizer Nutrition also supports the Department of Health's initiative to introduce a Code of Marketing of Breastmilk Substitutes (Hong Kong Code). However, we have some significant concerns with respect to the draft Hong Kong Code that was released on October 26 and feels obliged to put forth its position and recommendations as follows.

- 1) **Legislation is the effective means to end all forms of inappropriate promotion of breastmilk substitutes**
 - a) The draft Hong Kong Code is proposed as a voluntary code. As such it does not provide for compulsory compliance, whereas it is essential for the Hong Kong Code to have an effective enforcement mechanism to ensure compliance by all stakeholders concerned.
 - b) The voluntary code process has not enabled all stakeholders to equitably share their views, which the legislative process would have ensured.
 - c) Under the voluntary regime, consumers might be confused by the different behaviors of stakeholders concerned by the Hong Kong Code (such as manufacturers, retailers, members of the health care system) and are susceptible to being misguided by non-compliant marketing practices of manufacturers or retailers who choose not to comply.
- 2) **To regulate marketing behaviours of breastmilk substitutes up to 6 months and labeling for food for children under 36 months**
 - a) Pfizer Nutrition holds the view that the Hong Kong Code should follow the WHO Code of Marketing of Breastmilk Substitutes as well as practices in developed countries which have similar socio-economic situation with Hong Kong. In the wide majority of those countries, marketing restrictions apply to breastmilk substitutes for infants aged up to 6 months. This reflects WHO's recommendation of exclusive breastfeeding for the first 6 months, after which infants should be given appropriate complementary foods and are introduced to a vast array of other foods.



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- b) There is no scientific evidence showing that promotion on food for children 6 months or above has affected the breastfeeding rates and its duration. Any regulation for infant formula products should be based on risk analysis using the best available scientific evidence while taking into due consideration Hong Kong's open free market economy and the fundamental right of consumers to information and choices.

3) Marketing code and food labeling matters should be addressed separately

- a) Hong Kong's current food nutrition labeling scheme does not cover food for children under 36 months. In order to fill this gap, Pfizer Nutrition urges the government to speed up the development of legislation to regulate labeling and composition of products for infants and young children up to 36 months.
- b) Since the inception of the CODEX Alimentarius Commission and the World Trade Organization (WTO), matters of food labeling are considered within the remit of the CODEX Commission internationally. Even WHO refers to CODEX Alimentarius Commission for labeling standards.
- c) The Hong Kong Code should be separated from the labeling scheme as is done in other countries, thus creating consistency with the international standards. Separation of the two initiatives allows each to go through an appropriate development process that allows input of all key relevant stakeholders, provides Hong Kong consumers with a system that meets international standards.

4) Trademarks play an important role in enabling consumers to make informed choices

- a) The provision of the draft Hong Kong Code requiring the removal of registered or common law trademarks from labels impedes the use of an important commercial distinction. Trademarks are used to communicate product and brand names for a variety of purposes, including differentiating between categories of the same brand. They reflect each company's proprietary investment in quality and research, both of which are important to preserving consumer expectations associated with a particular brand. These are helpful product indicators that protect consumers by helping them to differentiate associated products from competing goods.
- b) Regulations that would disadvantage a particular trademark holder, including preventing the continuation of trademarks' use in their intended format, could be viewed as a "regulatory taking" of intellectual property rights, particularly in the absence of evidence proving that the regulation advances any compelling objective while also lacking any evidence that the speech in question is deceptive, misleading or otherwise undeserving of protection. As the current proposed provision does not meet a well-defined and significant public interest, it may open up the government to specific compensatory liabilities under law.

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- c) Use of trademarks is protected by the Paris Convention for the Protection of Intellectual Property and other international agreements administered by international organizations such as the World Intellectual Property Organization and the World Trade Organization.

5) An integrated approach to promote breastfeeding

- a) Pfizer Nutrition supports the WHO recommendation that breastmilk is ideal for infants and that exclusive breastfeeding should be encouraged for the first six months of life.
- b) Academic studies and surveys have consistently demonstrated that short duration of breastfeeding is a result of having not enough breastmilk, poor health conditions, end of maternity leave, and the need to return to work shortly after giving birth. The high percentage of working mothers, long working hours and short mandatory maternity leave contribute to high initiation rate but short duration of breastfeeding.
- c) In support of breastfeeding, our industry association, the Hong Kong Infant and Young Child Nutrition Association (HKIYCNA) has introduced a Code of Practice for the Marketing of Infant Formula, which is consistent with international standards of other developed countries and includes enforcement mechanisms. The Code of Practice applies to all members represented by HKIYCNA.
- d) Pfizer Nutrition considers that Hong Kong needs an integrated approach of promotion of breastfeeding. Mothers who cannot breastfeed or needs infant milk formula as a supplement should have access to appropriate information and advice in order to ensure that babies and infants receive the best nutrition. Pfizer Nutrition supports public-private partnerships to disseminate information on infant and young child nutrition.

Pfizer Nutrition Hong Kong
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