United Kingdom

COMPETITION

Market Study—Infant Formula Market—interim findings

LT Baby food; Competition and Markets Authority; Competition policy; Market investigations; Pricing

Infant Formula Market: Competition and Markets Authority publishes interim findings

Background

On 8 November 2024, the Competition and Markets Authority ("CMA") published an Interim Report regarding its study of the infant formula market.

The CMA launched an in-depth market study into the infant formula sector in the UK on 20 February 2024, driven by concerns over pricing, competition, and consumer information. The study aims to address the unintended consequences of existing regulations and the market dynamics that may be leading to higher prices for parents. Infant formula is a critical product for many families, with two thirds of families relying on it at some point during a child's early life. Prices for baby formula in the UK have risen by 18-36% in the past two years, above market inflation.

The CMA keeps markets under review as part of its general functions.[1] In doing so, the CMA may conduct a market study, the purpose of which is to help the CMA understand how a particular market is working and whether the needs of consumers are being met.[2] These market studies are conducted regularly across a variety of products and markets, with recent examples including housebuilding,[3] electric vehicle charging,[4] and music streaming.[5]

There are various outcomes that may follow a market study. On one end, the CMA may issue a clean bill of health for the market in question and no further action is taken. On the other, the CMA may take enforcement action against companies in breach of competition and consumer law. Alternatively, if it believes that further scrutiny is warranted, the CMA may ultimately make a market investigation reference under s.131 of the Enterprise Act 2002.

The CMA's decision to review this market corresponds with the regulator's focus on protecting the most vulnerable consumers. In particular, it is evident that this study is putting the CMA's recent research on market-specific consumer vulnerability into practice.[6] In its 2019 research report, it identified that there had so far been comparatively little focus on vulnerability associated with certain market contexts, for example, when a person is making a purchase at a stressful time.[7] A parent purchasing infant formula, wanting only the best for their child and only recently postpartum, fits neatly into this category.

Key Findings from the Interim Report

The interim report highlights several critical issues within the infant formula market:

Regulatory Impact on Pricing: Infant formula and follow-on formula products are tightly regulated so as: (i) not to discourage breastfeeding; and (ii) to ensure formula milks provide essential nutrients for babies and are safe.[8] The Interim Report found that the scope of the regulations around advertising and labelling have inadvertently contributed to price rises. For example, the

[1] Enterprise Act 2002 s.5.
[2] CMA's Supplemental guidance, para 2.1.
[3] *https://www.gov.uk/cma-cases/housebuilding-market-study*.
[4] *https://www.gov.uk/cma-cases/electric-vehicle-charging-market-study*.
[5] *https://www.gov.uk/cma-cases/music-and-streaming-market-study*.
[6] See *https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions/consumer-vulnerability-challenges-and-potential-solutions*.
[7] See *https://www.gov.uk/government/publications/consumer-vulnerability-challenges-and-potential-solutions/consumer-vulnerability-challenges-and-potential-solutions*.
[8] CMA Interim Report of 8 November 2024, Appendix A, paragraph A.1. *https://assets.publishing.service.gov.uk/media/672cce7d83959cc8c18bdc11/_Appendix_A_regulatory_and_policy_framework_.pdf*.

regulations prohibit suppliers from promoting price reductions or deals, as well as point-of-sale advertising, meaning suppliers are instead reliant on brand-building and marketing to differentiate products. This inevitably comes with additional costs that are passed on to the consumer.

Limited Competition: The CMA found that the infant formula market is highly concentrated: just 3 firms account for over 90% of supply.[9] In a concentrated market, there is little pressure on manufacturers or retailers to compete on price, resulting in higher costs being passed on to consumers.

Consumer Information: Parents often make decisions about infant formula in vulnerable situations, such as immediately after birth, without access to clear and impartial information. This can lead to the perception that higher-priced products are of better quality, despite NHS advice that all infant formulas meet minimum nutritional standards. Similarly, the CMA's consumer research found that 'price considerations when purchasing formula are tied into consumers' sentiment of "wanting the best" for their infant as opposed to the best "value"'. As a result, consumers have high customer loyalty: 'most consumers have internalised the belief that switching is "bad" for their infant and therefore are very unlikely to switch unless they need to [for health reasons]'.[10] This is despite the fact the CMA found evidence showing that parents could make a saving of up to £300-500 over a baby's first year of life by switching to a more affordable brand.

Branding and Labelling: The CMA noted that similar branding and labelling across ranges of infant and follow-on formulas can confuse consumers and indirectly promote infant formula through follow-on products.

Potential Solutions

The Interim Report included provisional proposals to address these issues and improve market outcomes:

Improving Information: Providing parents with clear, accurate, and impartial information about the nutritional sufficiency of all infant formula products. This could include measures to reduce the influence of branding, such as standardised packaging in healthcare settings.

Regulatory Adjustments: Revisiting regulations to ensure they support public health goals without leading to unintended market distortions. This might involve allowing some forms of price promotion or adjusting advertising restrictions.

Enhancing Competition: Encouraging greater competition among manufacturers and retailers to drive down prices. This could involve measures to increase transparency around pricing and costs.

Next Steps

Following the expiration of the six-month initial investigation period in August, the CMA was required to determine whether or not to make a market investigation reference. Ultimately, it determined that the issues it had identified in the market study would be best addressed by progressing with the study and developing recommendations to government to improve market outcomes.[11]

The CMA is now seeking feedback on its interim findings and proposed solutions. Stakeholders, including governments, healthcare providers, and consumer groups, are invited to submit their views by 29 November 2024, which the CMA will take into consideration. Final recommendations are expected to be published by February 2025.

[9] The report identifies the manufacturers as Danone, Kendal, and Nestle.
[10] Thinks Insight and Strategy (2024), Experiences using infant formula and follow-on formula: Qualitative research report, p.40. As set out in CMA's Interim Report of 8 November 2024, Appendix B, para.B.12.
[11] Report, 2.13

The final report will aim to provide a comprehensive set of recommendations to improve the infant formula market, ensuring it operates fairly and efficiently, and supports the nutritional needs of infants while promoting public health goals.

Timeline of Events

- 20 February 2024: The CMA launches the market study into infant formula and follow-on formula.
- 13 March 2024: Deadline for responses to the invitation to comment on the market study.
- 19 August 2024: Statutory deadline for publishing notice regarding the decision on whether to make a market investigation reference.
- 8 November 2024: Publication of the interim report outlining provisional findings and potential solutions.
- 29 November 2024: Deadline for final submissions on the interim report.
- 19 February 2025: Statutory deadline for publishing the final market study report.

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