

# Breast Milk Substitutes marketing criteria assessment

PwC verification assessment report - Corporate Head Office and Philippines visit

Nestlé

March 2021



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# 1. Introduction and context

## 1.1. Introduction

In September 2010, the FTSE4Good Policy Committee of FTSE International Limited (FTSE) approved the addition of a FTSE4Good Breast Milk Substitutes (BMS) Marketing Inclusion Criteria (the “Criteria”) to its FTSE4Good Index Series. The Criteria, based on the World Health Organization (WHO) International Code of Marketing of Breast Milk Substitutes (the “Code”) and subsequent World Health Assembly resolutions\*, sets requirements for company policies, lobbying, management systems and reporting, and requires that companies included on the index are subject to verification assessments. Inclusion into this index is governed by an independent FTSE4Good Breast Milk Substitute Committee (the “BMS Committee”).

### 1.1.1. Overview of the scope

There are differences between the Criteria and the Code in terms of geographical remit and product scope. An overview of the approach to the verification is set out in FTSE Russell’s context document: 2021 Update on BMS Verification Data Used for the FTSE4Good Index Series.

The products under the scope of the Criteria are infant formula and follow-on-formula products for the use of infants under the age of 12 months, complementary (weaning) foods and drinks for the use of infants under the age of six months, and delivery products (i.e. teats and bottles).

### 1.1.2. External verification

Nestlé is subject to an independent verification assessment conducted at the Corporate Head Office and in 2 higher risk countries, defined in terms of infant mortality and malnutrition, conducted by a professional audit firm.

The verification assessment reviews compliance with the Criteria. A large part of the assessment is examining whether Nestlé’s Corporate Head Office policies align with the Criteria and have been implemented in the 2 countries selected for the verification.

In previous verifications cycles, PwC produced a report for each company that included the findings from interviews with staff at Corporate Head Office and in two higher risk country local offices. Due to restrictions resulting from the COVID-19 pandemic, the second country assessment had to be delayed. As a result, PwC split the reports into two.

This report contains the assessment of policies, procedures and implementation in the first higher risk country selected. A second report contains the assessment performed for the second higher risk country selected.

There are cases where there are differences in interpretation of the Code, so it is important to note that PricewaterhouseCoopers LLP (PwC) do not act as a judge with regards to specific allegations but rather to assess whether Nestlé practices are in line with the Criteria and their stated policies regarding implementation of the Criteria.

In a change to how verification assessments have been undertaken previously, PwC was engaged by Stichting Access to Nutrition Foundation (operating as Access to Nutrition Initiative, or “ATNI”) to perform a verification assessment of Nestlé’s BMS marketing policy and practices against the Criteria, using the FTSE4Good BMS Marketing Verification Tool (the “Tool”) based solely on interviews and desk-based research. ATNI provided to PwC the results from the NetCode study conducted by Westat, for Nestlé’s in-scope products. See further details about the collaboration between ATNI and PwC in section 1.2.

The Tool provides a consistent basis to assess Nestlé’s policies and practices against a set of 103 principles which constitute the Criteria. In the 154 countries considered to be higher risk by FTSE Russell, Nestlé’s policy is to follow the stricter of its global policy for implementation of the Code or in-country legislation or guidance over the implementation of the Code (National Code), in line with the requirements of the Criteria.

PwC has worked with FTSE Russell since 2011, and in collaboration with ATNI for this verification, to help develop an assessment process to meet the needs of the BMS Committee in making decisions on inclusion in the FTSE4Good Index Series under the Criteria.

The verification assessment forms part of FTSE Russell’s overall assessment of Nestlé’s BMS marketing practices against the Criteria. PwC has applied procedures agreed with and directed by ATNI, using the Tool, to conduct interviews at Nestlé’s Corporate Head Office and in the first higher risk country selected for the verification.

The first higher risk country selected for a site visit by ATNI, based on a combination of its own and FTSE Russell selection criteria, was the Philippines. The output of PwC’s work is this Verification Assessment Report.

Nestlé has responded to PwC’s requests for information by making staff available for interviews, and by providing documents such as policies, procedures and other supporting documents. This is the fifth time that Nestlé’s BMS marketing practices have been assessed against the requirements of the Criteria. The verification included both the Nestlé and Wyeth Infant Nutrition businesses.

\*Subsequent resolutions include; WHA 39.28 (1986), WHA 45.34 (1992), WHA 47.5 (1994) WHA 49.15 (1996), WHA 54.2 (2001), WHA 55.25 (2002)

## 1.2. Collaboration between ATNI and PwC

### 1.2.1. Why collaborate?

In previous years, ATNI and PwC have conducted similar but separate in-country assessments/verifications of BMS marketing. Given the duplication of effort, it was decided that the assessments would be aligned. This synergistic approach was supported by ATNI, PwC and the BMS Committee.

### 1.2.2. Methodology Applied

The change in approach had no impact on the FTSE4Good assessment methodology or Criteria. PwC continued to perform a verification assessment against the BMS Marketing Criteria within FTSE's ESG Rating methodology and as part of the FTSE4Good Index BMS Marketing Criteria. The change in approach also had no impact on how ATNI carries out its research for its Indexes or assesses companies, which remains an evaluation of the extent to which companies comply with the Code and all subsequent WHA resolutions, and local laws and regulations, where stricter. As a result, the number of findings included by PwC and ATNI in their respective reports may differ.

### 1.2.3. Revisions to the Verification Process

The following changes in approach, from the prior verification performed in 2016/17, were applied:

#### Responsibility for Country Selection

For previous verifications, countries were selected for site visits by FTSE Russell and the BMS Committee using a risk assessment matrix developed by PwC with FTSE Russell, profiling the higher risk countries per the Criteria, using objective, publicly available data.

For this verification, ATNI used a combination of its own and FTSE Russell selection criteria to make the country selection. The selection criteria included the following risk factors, which were consistent with previous assessments performed for the FTSE4Good BMS verification and were agreed with FTSE Russell and the BMS Committee:

- Child mortality;
- Malnutrition (including both stunting and wasting rates);
- HIV/AIDS;
- Corruption;
- Human development;
- Access to improved water;
- Countries or territories where PwC or ATNI have recently conducted BMS marketing assessments;

- The incorporation of the Code in local legislation as per the 'State of the Code by Country' (IBFAN); and
- Number of allegations made in the IBFAN Breaking the Rules, Stretching the Rules 2017 report.

Data was gathered from a range of external sources including UNICEF, The United Nations Development Programme, WHO and Transparency International.

Additional factors were the presence of all three FTSE Russell Index companies, companies assessed by ATNI and the feasibility of doing studies in the country (e.g. safety, ability to get governmental approval, predominant language).

#### Data collection locations

For previous verifications, PwC has performed data collection in one urban and one rural location per country. In this verification, Westat data collection did not include a rural location.

#### In-country data collection

For previous verifications, PwC inspected health care facilities (HCFs) and retailer outlets and engaged a third party to perform media monitoring.

For this verification, Westat, a large US-based health research company, commissioned by ATNI, collected data using the [2017 NetCode Protocol\\*](#). This included interviews at 43 HCFs with mothers and health care professionals (HCPs), and observations of informational and educational materials and equipment in those settings. They also visited 43 large and small physical retailers, and monitored 5 major online retailers, to capture their marketing practices. Further, traditional and social media advertising and marketing was captured, and the labels and inserts of all products assessed. PwC were provided with the findings of the Westat studies for products within the scope of the FTSE4Good Criteria (excluding the results of the interviews with mothers). These findings have been reported in section 3.2.

#### Joint interviews

ATNI joined PwC to carry out interviews with relevant staff in Corporate Head office and in-country Head Office, as well as a sample of in-country distributors.

#### Notification to Companies of location

No notice was given to Nestlé before Westat started data collection in HCFs and retailer outlets and media monitoring was performed. Nestlé was notified that the Philippines was the first higher risk country selected one week in advance of PwC and ATNI's in-country visit to conduct local office interviews.

### 1.3. Scope of work performed by PwC and Westat

The scope of PwC’s work was determined collaboratively in discussion with ATNI, the Director of Environmental Social Governance at FTSE Russell, the Principal Advisor of Responsible Investment at FTSE Russell and the BMS Committee. It has also been codified in the procedures required under the Tool. The procedures PwC performed consisted of:

- Reviewing company BMS policies and procedures at the Nestlé Head Office through reviewing documentation and conducting interviews;
- Reviewing company BMS policies and procedures at the in-country Head Office through performing an in-country site visit to the Philippines to review documentation and conduct interviews;
- Conducting interviews with a sample of distributors in-country;
- Reporting Westat data collection findings; and
- Reporting key factual findings.

The 2019/20 verification was extended to incorporate the RB business. Confirmation that RB met the FTSE4Good BMS criteria and therefore retained inclusion on the FTSE4Good index series took place in December 2018, following its acquisition of Mead Johnson in June 2017. As such the 2019/20 verification assessment includes Nestlé, Danone and RB. The results of the Danone and RB verification assessments are presented in separate reports.

#### 1.3.1. PwC evidence gathering methodology

PwC evidence gathering procedures at the Nestlé Head Office and in the country selected for a site visit were based on interviews and inspections. Where issues or items for further consideration emerged, PwC sought evidence to support these issues where possible. This is described in the factual findings (section 3.1).

PwC assessment procedures were based on historical information and the projection of any information or conclusions in PwC’s report to any future periods would be inappropriate.

In the context of the procedures described in the adjacent table, the factual findings outlined in section 2.1 are any policies or procedures inspected, any practices observed and any statements made by Nestlé employees or distributors, identified in the course of interviews performed, which do not satisfy the Criteria in the Tool. Further details are provided in section 3.1.

Level	Evidence gathering activity
<b>Corporate Head office</b>	<p>Reviewed Nestlé’s policies and procedures relating to the Criteria;</p> <p>Held a series of interviews with key individuals charged with responsibility for overseeing or implementing the relevant policies and procedures that PwC reviewed at the Nestlé Head Office in Vevey, Switzerland; and</p> <p>Performed limited testing of evidence to corroborate the application of the Criteria.</p>
<b>In-country Head office in the Philippines</b>	<p>Visited the office of Nestlé in the Philippines to perform procedures detailed in the Tool regarding the approach to implementing the requirements of the Criteria in-country; and</p> <p>Performed limited testing of evidence to corroborate the application of the Criteria.</p> <p>Nestlé was notified of PwC and ATNI’s site visit 1 week in advance of arrival.</p>
<b>Distributors in the Philippines</b>	<p>Interviewed 3 contractual distributors; two for Nestlé and one for Wyeth.</p>

The factual findings from PwC’s procedures are in section 3.1.

### 1.3.2. Westat data collection methodology: Netcode

#### Guidance notes:

Westat followed the [NetCode 2017 Protocol for Periodic Assessment\\*](#) designed to monitor the marketing of breast milk substitutes and complementary foods for products from birth to 36 months of age.

#### Steps included the following, the scope of which is wider than the requirements of the FTSE4Good verification assessment:

- Comparison of local laws and regulations and The Code, to identify where local provisions are stronger, in order to assess companies' marketing practices against those.
- Adaptation of standard NetCode data collection forms to the Philippines context.
- Institutional Review Board (IRB) approvals for Westat and the local research partner, from government. The IRB members are responsible for the review of the technical and science component of research protocols i.e. appropriateness of the research design and methods, sample size calculation, soundness of the inclusion and exclusion criteria, internal and external validity of study tools and procedures.
- Selection of the 43 health facilities using a two-stage sample design, within the National Capital Region (NCR), taking into account population size, geography, number of female patients aged between 15-49 in each sub-region of the NCR. This was to ensure a representative random sample of 33 HCFs from a total of 728, including both public and private facilities, and 10 maternity facilities from a total of 306.
- The NetCode protocol calls for interviews with 5 mothers of children under 6 months and 5 mothers of children 6-24 months (2 years) old, conducted over a period of a single day, at each HCF. The Nutrition Center of the Philippines (NCP), the local research partner, achieved this threshold of 165 for each age group; mothers with infants of these ages were asked whether they would take part voluntarily; there were no refusals. Interviews with mothers are not included in the scope of the FTSE4Good verification assessment performed by PwC.
- At each facility, NCP asked for the names and designations of all HCPs who had contact with mothers of young infants up to 24 months and who were present during the days the team would visit. Three HCPs agreed to be interviewed at most facilities; only two were available at 3 facilities. 126 were interviewed in total.
- The NetCode protocol specifies data collection at one small retailer or pharmacy in proximity to each HCF and visits to 10 large retail stores that sell a high volume and variety of products under the scope of the study. The 10 large retailer selection was based on local knowledge of NCP. The 33 smaller stores were identified by NCP by asking staff at the HCF for the location of the closest store or by walking around the area near the facility.
- The online retailers monitored for the Philippines were the largest in the country; Lazada, Shopee, Galleon and Carousell. Note: Nestlé only has a formal contract with Lazada and Shopee, therefore no findings are included in relation to the other two e-retailers.
- NCP conducted online searches and visited retailers to compile a list of a total of 185 distinct BMS and CF 6-36 month products made by 22 companies (including parallel imports). Not all were available to purchase. ATNI checked with each company which products were legitimate BMS products and which were parallel imports; for the 3 FTSE4Good companies, a total of 68 legitimate products were confirmed and their labels analysed (there were no inserts).

\*<http://apps.who.int/iris/bitstream/10665/259441/1/9789241513180-eng.pdf?ua=1>

### 1.3.2. Westat data collection methodology: Netcode (continued)

- For traditional media, NCP entered directly into an agreement with Organic Intelligence (OI), a local independent media monitoring organization. OI obtained data for six months, from October 2019 - March 2020. In total, OI monitored 4 television channels and 81 radio channels. This represented more than 70% of the market.
- For online media monitoring, Westat identified the company and brand websites as well as the available social media platforms associated with each of those websites (Facebook page, Instagram, YouTube channel and/or Twitter feed). Only websites and social media pages that appeared to originate from the Philippines or targeted a Filipino audience were included in the monitoring. Westat did not monitor global company and brand websites or their social media pages. Westat trained NCP staff to monitor the selected websites weekly for eight weeks (5 February to 25 March 2020). NCP staff followed this process once a week over the eight-week period for online media monitoring. The data collectors visited the media and scanned them for promotions, capturing screenshots each week including 6 company websites, 8 brand websites, 3 YouTube pages, 9 Facebook pages, 2 Twitter pages, and 1 Instagram page associated with the major international company and brand websites. Ten mother and baby websites were included in the monitoring, selected based on the local partner's knowledge, as well as 7 YouTube pages, 10 Facebook pages, 7 Twitter pages, and 7 Instagram pages associated with the parenting and child websites.

	no.	%
<b>Characteristics of HCs</b>		
Private	7	21.2%
Public	26	78.8%
<b>Total HCs</b>	<b>33</b>	<b>100.0%</b>
Private Maternity Facilities	10	100.0%
Public Maternity Facilities	0	0.0%
<b>Total HCFs</b>	<b>43</b>	<b>100.0%</b>
<i>Characteristics of Mothers</i>		
Mothers with a child < 6 months of age	165	50.0%
Mothers with a child 6-24 months of age	165	50.0%
<b>Total mothers interviewed</b>	<b>330</b>	<b>100.0%</b>
<b>Total HCPs interviewed</b>	<b>126</b>	<b>100.0%</b>
<i>Characteristics of Physical Retail Outlets</i>		
Small retailers (1 in proximity to each facility)	33	76.7%
Large retailers	10	23.3%
<b>Total retail outlets visited</b>	<b>43</b>	<b>100.0%</b>
<b>Total online retailers monitored</b>	<b>4</b>	
<b>Total mother + baby websites</b>	<b>10</b>	
<b>Traditional media duration</b>	<b>6 months</b>	
<b>Total products assessed (labels, inserts)</b>	<b>126</b>	
<i>FTSE companies – legitimate BMS products</i>	<b>68</b>	

#### Acronyms:

HCF: Health Care Facility, comprising:  
 HC: Health Centres  
 MF: Maternity Facilities  
 HCP: Health Care Professional

In the context of the procedures described, the factual findings from Westat's procedures are outlined in section 3.2.

Note; the 126 total products includes those all products found in the market, made by all companies, assessed by ATNI. A total of 68 products were made by the three FTSE4Good companies.

## 1.4. Limitations

As noted in section 1.3.2 above, the findings in section 3.2 were based on procedures performed and data collected by Westat. PwC have not undertaken any additional verification procedures in relation to that underlying data.

Some of the procedures performed by PwC and data collected by Westat are interview based, resulting findings can be subject to recall bias by the person being interviewed with no materials available to verify details, such instances are noted throughout this report.

The procedures PwC performed and the associated findings are listed in section 3.1. PwC's work did not constitute as an assurance service in accordance with independent assurance standards and accordingly PwC do not express any assurance conclusions. Had PwC performed additional procedures, other matters might have been identified and included in this report.

## 1.5. Purpose of this report

This report explains the procedures PwC performed and includes PwC and Westat's factual findings. It is produced for the use of the FTSE4Good BMS Committee, but is being shared publicly as part of reporting on the overall assessment process in response to stakeholder feedback on the need for transparent reporting. This report will be published on ATNI's website, as ATNI is responsible for overseeing the grant and the work of PwC and will be referenced through the use of a hyperlink from the BMS section of FTSE Russell's website.

PwC's findings are presented for the BMS Committee's consideration. It is the responsibility of FTSE Russell and the BMS Committee to decide on the appropriate course of action with regard to decisions on the inclusion of Nestlé in the FTSE4Good Index Series.

## 1.6. Use and distribution of this report

This report has been prepared solely for the use of ATNI and its Board of Directors and solely for the purpose of reporting on compliance with the FTSE4Good Breast Milk Substitutes (BMS) Marketing Inclusion Criteria, in accordance with the terms of our agreement dated 20 June 2019, and subsequent variation letters dated 9 September 2019 and 21 January 2021. No part of this report shall be copied or used for any other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than ATNI and its Board of Directors, for this report or for the results of our work, save where terms have been expressly agreed in writing. We have extended our assumption of duty to FTSE Russell and its BMS Committee, in accordance with the terms of the letter between us dated 20 June 2019.

## 2. Executive Summary

Following its inclusion in the FTSE4Good index in 2011, Nestlé was subjected to its fifth FTSE4Good verification assessment. Interviews were held in November 2020 with the Nestlé Head Office in Vevey, Switzerland (Corporate Head Office), followed by a site visit to the Philippines in March 2020.

The Corporate Head Office interviews demonstrated that suitable governance structures and a number of appropriate policies and procedure documents are in place that meet the requirements of the Criteria. The site visit also demonstrated awareness of the Criteria at the in-country level and appropriate allocation of responsibilities. Additionally, we noted that policies and procedures in the Philippines are adapted for local requirements; Executive Order No. 51 (the “Milk Code”) and Revised Implementing Rules and Regulations of Executive Order No. 51 (RIRR).

In addition to some overall company context, summarised in this section are the inconsistencies noted in the application of the Criteria. These have been highlighted for the consideration of the BMS Committee in its review of the inclusion of Nestlé in the FTSE4Good Index Series. All key factual observations from the procedures performed are documented in section 3.

We also noted that some of the factual findings raised in our previous verification remained relevant and open. These are documented in section 4.

## 2.1. Context

### 2.1.1. Approach to implementation of the criteria

#### Company context

- 1. Background:** In our 2014 verification, we noted that Wyeth Infant Nutrition (WIN) had been integrated and aligned to Nestlé's Corporate Head Office policies and procedures in 2014. In the countries visited during the 2016/17 and 2019/20 verifications, it was apparent that although Wyeth products and Nestlé products are managed separately within the organisation using distinct corporate and sales teams as well as distributors, the overarching policies, as they relate to BMS, were consistent across the two parts of the business. Although the Wyeth business also manufactures mainstream products, we noted that there was a perception in the market that the Wyeth products were a more premium brand.
- 2. Relevant updates:** Since the verification assessment performed in 2016/17, Nestlé launched an "Engagement Code for Nutrition businesses with Healthcare Professionals and Institutions" (2019). This document sets out the principles for engaging with health care institutions and professionals on BMS and the types of interactions employees can have with health care professionals to avoid conflicts of interest. This is designed to complement and provide additional guidance to "The Nestlé Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breast Milk Substitutes".

#### Country background

- 1. Awareness of the Code:** The government has a National Code over BMS marketing practices; the Philippine Code of Marketing of Breast Milk Substitutes, Executive Order 51 (EO51), 1986, also known as the "Milk Code", and the revised Implementing Rules and Regulations of the Milk Code, 2006 ("RIRR") which followed. The National Code in the Philippines is more stringent than the Code and applies to BMS (starter and follow up formula) and growing up milk for infant and young children (aged 0-36 months). Complementary foods are also included.  
  
EO51 stipulates the following sanctions upon conviction for any violation of the Milk Code:
  - Individuals: imprisonment of two months to one year and/or a fine of PHP 1,000-30,000.
  - Corporate/partnership: the penalty noted for individuals would be imposed on the chairman of the board of directors, president, general manager or partners and/or persons directly responsible. Suspension/revocation of license, permit or authority for pursuit of business.
  - Health worker: revocation of license, permit or authority for the practice of profession/occupation.
- 2. Breastfeeding trends:** According to the 2017 Philippines National Demographic and Health Survey (NDHS):
  - Breastfeeding is very common in the Philippines, with 93% of children breastfed.
  - More than half (57%) of children are breastfed within the first hour of life, and 85% within the first day.
  - The prevalence of children under age two currently breastfeeding declines with age, from 94% among children less than two months to 54% of children age 18-23 months.

### 2.1.1. Approach to implementation of the criteria

- Among children under 6 months, 85% are currently breastfeeding and 9% are consuming complementary foods, against recommendations.
- Among children age 6-8 months, 80% consume complementary foods.
- More than half of children age 6-8 months are both breastfeeding and consuming complementary foods (58%).
- The median duration of breastfeeding is 19.8 months for children born in the 3 years before the survey.

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#### Local operating context

1. **Market share:** Nestlé and Wyeth account for approximately 35% and 32%, respectively, of the total infant formula market share (as confirmed with Nestlé) in the Philippines.
  2. **Channels to market:** Nestlé has an infant nutrition manufacturing facility in Cabuyao. BMS are sold to retailers and wholesalers through distributors. BMS are sold to consumers through a range of different retail outlets, including large supermarkets and smaller retailers (referred to as Sari-Sari stores), pharmacies and drugstores, and e-commerce platforms (Lazada and Shopee). Nestlé and Wyeth use different contractual distributors and sales teams.
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## 2.2. Key findings

PwC findings are indicated by areas shaded in **yellow**. Westat findings are indicated by areas shaded in **blue**.

Finding	Detail	HO	PH
<p>1. Some Foods for Special Medical Purposes (FSMPs) are excluded from the products covered by the Nestlé BMS Policy</p>	<p>Nestlé includes the following FSMPs within the scope of the Nestlé BMS Policy, but excludes other FSMPs:</p> <ul style="list-style-type: none"> <li>● Infant formula for the reduction of the risk of allergy "HA" branded (or equivalent)</li> <li>● Infant formula for constipation relief</li> <li>● Infant formula for low hygiene conditions</li> </ul> <p>FSMPs are implicitly covered by the Code. Although not explicit in the FTSE4Good criteria, it is implied and hence the BMS Policy should include FSMPs as they are infant formula products for infants under the age of 12 months. Note, there has been no change to the scope of the Criteria nor the wording of Nestlé's BMS policy with regards to FSMPs since previous verification assessments.</p>		
<p>2. Sale incentives are based on total Nestlé sales or market share</p>	<p>The Tool requires that for persons employed by manufacturers and distributors, systems of sales incentives for marketing personnel must not include the volume of sales of products within the scope of the company policy in the calculation of bonuses.</p> <p>In line with the WHO Code and the Criteria, the BMS policy states that bonuses or incentives aimed at encouraging increased volume of sales of infant formulas must not be paid to sales staff, medical delegates, and other marketing personnel. However, it was confirmed to us during Head Office interviews that Nestlé calculate employee bonuses based on market share of the overall infant nutrition category in a defined location.</p> <p>Note, there has been no change to the scope of the Criteria nor the wording of Nestlé's BMS policy with regards to sale incentives since previous verification assessments.</p>		
<p>3. Specific requirements are not included within the sample HCP detailer inspected</p>	<p>Informational or educational materials must include specific requirements detailed by the Tool. A Nestogen FSMP detailer (material providing details or scientific information on a product's potential uses, benefits, side/adverse effects), the purpose of which is to be presented to HCPs during hospital visits by Nestlé medical staff, was inspected. It did not include points (b), (c) and (d) of Article 4.2 of the WHO Code.</p> <ul style="list-style-type: none"> <li>● (b) Maternal nutrition, and the preparation for and maintenance of breastfeeding</li> <li>● (c) the negative effect on breast-feeding of introducing partial bottle-feeding</li> <li>● (d) the difficulty of reversing the decision not to breastfeed</li> </ul>		

Finding	Detail	HO	PH
4. Membership of all trade associations are not disclosed	The Tool requires companies to have a procedure to disclose its membership of trade associations and industry policy groups. Nestlé Philippines are a member of four trade associations; these are not all clearly disclosed. Their membership to the Phillipine Chamber of Food Manufacturers is disclosed on the Nestlé global website. Their membership to Infant and Paediatric Nutrition Association of the Philippines (IPNAP) is disclosed on the Wyeth Philippines website. No other disclosures were noted.		
5. Whistleblowing portal is not accessible through the Wyeth global or Phillipine website	Our search on the Wyeth global and Phillipine websites did not show a clear link to the Tell Us system - Nestlé's whistleblowing hotline which enables employees and external stakeholders to raise any concerns anonymously that they may have with Nestlé via an online portal or via phone.		
6. Incentives/ compensation to reward compliance are not in place	The Tool requires companies to provide incentives/ compensation to reward compliance with the requirements of company policy. In the Philippines, medical field staff are regularly assessed for knowledge on the Milk Code and they are rewarded for achieving high marks. There are no other incentives/ compensation methods in place that reward other Nestlé Nutrition employees for compliance with the Nestlé BMS Policy.		
7. Findings from healthcare worker interviews	23 findings noted by Westat. 14 of the findings were non-compliances with WHO Article 6 (Health care systems). 9 of the findings were non-compliances with WHO Article 7 (Health workers).		
8. Findings of promotion on online retailer sites	2 findings noted by Westat of price related promotion on Lazada.com.ph, with whom Nestlé have a contractual relationship.		

# 3. Factual findings

## 3.1. PwC factual findings

Interviews with staff from the Nestlé Head Office were performed in November 2019. The country site visit to the Philippines was performed in March 2020. The fieldwork assessment in both instances entailed inspection of relevant policies and procedures provided to us and interviews with the relevant staff to understand processes in place against the Criteria included within the Tool. The factual findings from these activities performed both at Head Office and in-country are provided in the table below.

Area	Factual Findings
<b>3.1.1. Company policies and procedures</b>	<ol style="list-style-type: none"><li data-bbox="465 375 1860 530"><b>1. Governance structure:</b> The responsibility for the management, implementation and monitoring of compliance with the Nestlé BMS Policy is overseen by the Nestlé Head Office in Vevey, Switzerland. A procedures manual is in place for each country. These manuals are created by the market's WHO Code Compliance Manager, who has knowledge of the National Code in the particular market. This is done with guidance from the Business Compliance Manager for that zone (note; there are three zones globally) and Head Office. Responsibility for identifying local regulations that are different to Corporate Head Office policies as well as monitoring compliance is allocated to the market's WHO Code Compliance Manager.</li><li data-bbox="465 558 1860 713"><b>2. Implementation of BMS policies and procedures:</b> “The Nestlé Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breast Milk Substitutes” is publicly available on the Nestlé corporate website and provides instructions and guidance when undertaking marketing activities on Breast Milk Substitutes. The Corporate Procedure Manual is an internal document established at corporate level, that sets out to provide guidance to staff on the governance required in each of the company's functional areas concerned with the marketing of all products within the scope of the WHO Code. In each country, the Corporate Procedure Manual is amended to include any additional requirements derived from the National Code.</li><li data-bbox="465 740 1860 852"><b>3. Knowledge of the Criteria:</b> Wide ranging interviews were performed with Corporate and in-country Head Office functions involved in Nestlé's application of the Criteria and relevant national legislations. Detailed Criteria knowledge was noted across the individuals interviewed (refer to Appendix 1), who stated their commitment to adhering to the BMS marketing practices required by the Criteria. In the Philippines, Nestlé confirmed that the requirements of the Criteria, the National Code and Nestlé Head Office policies are implemented.</li><li data-bbox="465 880 1860 1035"><b>4. Scope with respect to Food for Special Medical Purposes (FSMPs):</b> As per Nestlé's “What is the WHO Code?” page on their Corporate website, which is linked to within the Nestlé BMS Policy, <i>“In higher risk countries, the product range listed below, and infant and follow-up formulas classified as FSMPs under local legislation are included within the scope of the Nestlé BMS Policy:</i><ul style="list-style-type: none"><li data-bbox="504 953 1367 978">• <i>Infant formula for the reduction of the risk of allergy "HA" branded (or equivalent)</i></li><li data-bbox="504 980 929 1005">• <i>Infant formula for constipation relief</i></li><li data-bbox="504 1007 981 1033">• <i>Infant formula for low hygiene conditions”</i></li></ul>Nestlé Health Science (NHSc) which was founded in 2011 is established as a division independent of Nestlé Nutrition. NHSc manufacture and</li></ol>

market products and services designed to be recommended by HCPs for patients with specific dietary needs. NHSc produce the following relevant products that are not included within the scope of the Nestlé BMS Policy:

- Althéra and Alfamino made for babies with cow’s milk protein allergy (CMA)
- Alfaré for babies with severe gastrointestinal symptoms and CMA

FSMPs are covered by the Code. As such, the Criteria should be applied to, and the BMS Policy should include, FSMPs, as they are infant formula products for the use of infants under the age of 12 months. Note, there has been no change to the scope of the Criteria nor the wording of Nestlé’s BMS policy with regards to FSMPs since previous verification assessments.

In the Philippines, both the Nestlé Philippines, Inc. and Wyeth Philippines, Inc. Policy Manuals explicitly include FSMPs in scope.

### 3.1.2. Lobbying and trade associations

1. **Head Office support of public policy (Government lobbying):** Nestlé stated that it continues to support efforts by governments to implement the Code. The managing body in each country is responsible for developing the local position and a monthly WHO Compliance call is in place to exchange relevant communications, including Head Office and in-country positions. Note; the managing body varies from country to country. Examples given were Compliance Manager, General Manager, Regulatory Affairs and Marketing Head. Nestlé’s membership to trade associations and industry policy groups is publicly available and easily found on the Nestlé website.
2. **In-country support of public policy (Government lobbying):** In the Philippines, Nestlé is a member of the following trade associations and industry associations:
  - Philippine Chamber of Food Manufacturers Inc.
  - Beverage Industry Association of the Philippines
  - European Chamber of Commerce in the Philippines
  - Infant and Paediatric Nutrition Association of the Philippines (IPNAP)

However, we noted that aside from the Phillipine Chamber of Food Manufacturers, the other trade associations are not explicitly included on the Nestlé global nor Philippines website.

The Nestlé global site refers to International Special Dietary Foods Industries (ISDI), IPNAP is a member of ISDI, this connection is not clear. IPNAP is also a member of two other associations that Nestlé Philippines is not a member of: the Philippine Sub-Committee to the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) and the Asia Pacific Infant and Young Child Nutrition Association (APIYCNA).

IPNAP is included in the ‘About us’ section of the Wyeth Philippines website. The other three are not included on the Wyeth Philippines website and no mention of trade associations is made on the Wyeth corporate site.

### 3.1.3. Health Care Professionals and Health Care Entities

1. **Health care events and sponsorship:** Nestlé has a code in place that sets principles for interactions between Nestlé’s Nutrition Business Units and Health Care Professionals and Institutions; the “Engagement Code for Nutrition businesses with Healthcare Professionals and Institutions”. Detailed knowledge of the provisions of this document were noted across the individuals interviewed both at Head Office and in the Philippines (refer to Appendix 1). Corporate Head Office confirmed that a procedure is in place to disclose to the institution to which a health

worker is affiliated any contribution made to him/her or on his/her behalf for fellowships, study tours, research grants, attendance at professional conferences or similar support. We inspected evidence of this procedure in the Philippines.

2. **Information and education materials:** A Nestogen FSMP detailer (material providing details or scientific information on a product's potential uses, benefits, side/adverse effects) was inspected. This document is to be presented to HCPs during hospital visits by Nestlé medical staff. It did not include points (b), (c) and (d) of Article 4.2 of the WHO Code.
  - (b) Maternal nutrition, and the preparation for and maintenance of breastfeeding
  - (c) The negative effect on breast-feeding of introducing partial bottle-feeding
  - (d) The difficulty of reversing the decision not to breastfeed

### 3.1.4. Employees

1. **Infant nutrition team:** Nestlé employs a dedicated, senior team experienced in infant nutrition to oversee the implementation of the Criteria as well as implementation and monitoring of the Nestlé BMS Policy.
2. **Training and awareness:** Training and awareness of the Nestlé Policy is a mandatory part of every Nestlé Infant Nutrition employee's induction. ASET (Advanced Strategic Enhancement Training), is Nestlé's BMS training programme that was developed to spread awareness globally on Nestlé's BMS policies and procedures for implementation. There are 4 levels: Green, Blue, Silver and Gold. The 'Green ASET' training module must be completed within three months of joining the Nutrition business unit, and must be repeated every three years. Green is the minimum level of training and covers Nestlé's vision, nutrition in first 1,000 days, breastfeeding, WHO compliance and the Code of Conduct. At the Corporate Head Office level, every 4 to 6 weeks, a number of mid-management level employees (usually Infant Nutrition Human Resources and Finance roles) perform refresh training with a review of fundamentals, including a refresher on the WHO code (Silver level), and once a year there is classroom training for business managers (Gold level).  
Monitoring completion of in-country training is the responsibility of the market WHO Code Compliance Manager. In the Philippines, Nestlé confirmed that all new hires complete the Green ASET training module. We were informed this is performed within six months of joining. Completion of this module is also monitored by the global team. For a sample of employees in the Philippines, we inspected evidence of training records to confirm this is the case. In addition, employees within Marketing must complete refresher training if they move within the organisation from one product to another. Sales and field operations employees must complete annual training, including an exam at the end which must be passed. For field operations (e.g. medical delegates, field force effectiveness teams), a 100% pass rate is required. A pass rate was not confirmed for the sales employees.
3. **Raising allegations:** Nestlé's whistleblowing hotline, Tell Us, enables employees and external stakeholders to anonymously raise any concerns that they may have with Nestlé via an online portal or via phone. Nestlé also have an Internal Reporting System (IRS) available internally to employees, which allows all employees of the Nestlé Group, to submit reports in relation to BMS non-compliance. The IRS facilitates reports to be made in an anonymous and confidential way outside the line management structure. Both Tell Us and the IRS are operated by a third-party company specialised in the handling of whistleblowing hotlines. A WHO Code Ombudsperson System is also operated at a global and local level. This is for internal issues only, and is another channel for employees to use which ensures that the reporter's confidentiality will be retained and

that there will be no retaliation. Ombudsperson conclusions are reported to the WHO Code Committee and are included within the internal annual report of compliance.

During the Philippines visit, employees demonstrated good knowledge of the Tell Us whistleblowing hotline, the IRS and the WHO Ombudsperson System. An Ombudsperson is in place in the Philippines. Instruction to first seek advice or guidance before making a complaint is included within the Nestlé BMS Policy.

4. **Rewarding compliance for employees:** Corporate Head Office stated that the Compliance function have personal objectives relating to compliance with the Nestlé BMS Policy which are used in their performance appraisals. They also stated that employees outside of the Compliance function are not required to include personal objectives relating to the Nestlé BMS Policy, and therefore are not assessed on this as part of their performance appraisal. However, subsequent to the interviews held, Corporate Head Office provided us with a procedure document which confirms that performance against job descriptions is required to be considered as part of the performance appraisal process. As described below, job descriptions, also referred to as job success profiles, for all relevant sales and marketing staff include WHO Code/BMS Policy references.  
In the Philippines, medical field staff are regularly assessed for knowledge on the Milk Code and they are rewarded for achieving high marks. There are no other incentives/ compensation methods in place that reward other Nestlé Nutrition employees for compliance with the Nestlé BMS Policy. Further, no reference to the Corporate Head Office procedure described above was made during our interviews with the Nestlé Philippines team.
5. **Contracts/ Job descriptions:** The Tool requires formal job descriptions for relevant sales and marketing personnel that are linked to the requirements of the company policy. At Head Office, it was confirmed that job descriptions include explicit reference to the BMS Policy. In the Philippines, for a sample of employees, we inspected the employment job descriptions, referred to as Job Success Profiles, which included explicit reference to “the Local Code, the WHO Code and Nestlé/Wyeth Instructions for covered products.”
6. **Bonuses:** Although incentives, at Head Office and in the Philippines, are not based on volume or value of Infant Nutrition sales, they are based on market share of the Infant Nutrition division. Note, there has been no change to the scope of the Criteria nor the wording of Nestlé’s BMS policy with regards to sale incentives since previous verification assessments.

### 3.1.5. Contractual third parties

1. **Contracting:** As noted in the Nestlé BMS Policy, and confirmed to us during our Corporate Head Office visit, WHO Code compliance clauses are included within formal agreements with third parties involved in BMS marketing or sales activities. The Legal department in each country is responsible for including the clauses in the agreements. For all three distributors selected in the Philippines, we inspected the contract in place with Nestlé/ Wyeth and confirmed that the WHO Code compliance clauses were included.
2. **Training/raising awareness:** “Reminders to the trade” are sent out in a formal letter to distributors and retailers on an annual basis, and “Do’s and Don’ts” are distributed via posters and leaflets during distributor and retail visits. Completion of distributor training is the responsibility of the market WHO Code Compliance Managers, using materials developed by Head Office.

In the Philippines, three distributors were visited; two Nestlé distributors and one Wyeth distributor. The Wyeth distributor confirmed that Milk Code training, which included the WHO Code, EO51 and RIRR, and covered Wyeth products, was held by Wyeth at a hotel in February 2020 for all Wyeth distributors. One Nestlé distributor confirmed that training is conducted for their employees by their Training Manager, who was trained by a member of Nestlé, and the other distributor confirmed that the training is performed by the Nestlé Field Sales Manager. Both Nestlé distributors confirmed that the Nestlé Field Sales Manager is frequently on site or in the field with their employees to answer any questions. Nestlé branded posters for “Milk Code Compliance at Point-of-Sale” (see Appendix 3) were prominently placed at the two Nestlé distributors, however these were not noted at the Wyeth distributor.

All distributors confirmed that they are contractually required by Nestlé to maintain records of training provided to their employees, and provide Nestlé with evidence upon request.

3. **Raising allegations:** During our interviews, all distributors stated that they would report any instances of non-compliance to their Nestlé Field Sales Manager/ Wyeth Distributor Account Manager. The Wyeth distributor showed us a “Do’s and Don’ts” booklet which included “key contacts for potential or actual Milk Code violations” on the final page. The booklet instructed the reader to inform their assigned Wyeth field personnel, mail or call the Wyeth office, or visit the Wyeth website. One of the Nestlé distributors also said that if they came across customers with concerns, they would inform the customers of the Nestlé website and to “report using the hotline”. There was no explicit mention by the three selected distributors of the Tell Us whistleblowing hotline.
4. **Bonuses/incentives based on BMS sales:** All three distributors selected confirmed that they receive no bonus or other incentive in relation to covered products, and they only receive sales targets and incentives for products which are out of scope, i.e. stage 4 and above (3 years+).
5. **Provision of guidance to distributors:** The employees interviewed at the three selected distributors demonstrated good knowledge of the Nestlé BMS Policy and the Philippine Milk Code, and have regular contact with a representative from Nestlé/Wyeth. It was noted that Nestlé provided the two Nestlé distributors visited with training materials to assist them in the training of their employees, but the Wyeth distributor was not provided materials by Wyeth, and had their own training materials. These training materials demonstrated similar content as the Nestlé provided materials.
6. **Potential corrective actions for non-compliances:** The Nestlé BMS Policy explicitly includes corrective actions with respect to third parties. In the Philippines, all three selected distributor contracts included reference to potential corrective actions for non-compliances. This was also included in the Nestlé training materials provided to the two Nestlé distributors.

### 3.1.6. Non contractual third parties

1. **Training/raising awareness:** During our Head Office interviews, Nestlé confirmed that distributors are required to send letters to retailers, reminding them of requirements with respect to BMS. During our distributor interviews in the Philippines, all three selected distributors confirmed that the sending of letters is a contractual requirement with Nestlé. The distributors also confirmed that they are required to obtain an acknowledgement from the retailer in response, to ensure that they have read, and agreed to adhere to, the requirements. The Nestlé team in

the Philippines confirmed that where non-compliances are noted at non-contractual partners in the course of field visits and trade visits, they bring this to the offender's attention and provide them with "Do's and Don'ts" materials.

The Nestlé global 'Baby & Me' and Philippine site clearly state that the WHO recommends exclusive breastfeeding for the first 6 months and continued breastfeeding thereafter for as long as possible. This is not visible on the Wyeth global or Philippine site.

2. **Raising allegations:** Tell Us is available in many languages and is available via an online portal or via phone. Nestlé informed us that by mid-March 2017, the link to Tell Us was included in the webpages of all Nestlé higher-risk markets. The Nestlé global website has a banner towards the bottom of every web page which clearly says "Compliance Concerns. Let us know your concerns. Tell Us." When searching on the Nestlé Philippine website for the Tell Us link, we quickly and easily found reference to it at the bottom of the page under 'Useful links'. The Tell Us page on the global and Nestlé Philippine websites are the same, except that the global Tell Us page includes an additional section on 'What happens after I have sent my report?'. This additional section outlines the procedure for acknowledgement of receipt, triage, escalation confidential investigation, and decision and response. Our search on the Wyeth Philippine website did not show a relevant link for Tell Us. There is a 'careline' section of the website which provides details for a Wyeth Nutrition Careline. At the bottom of this page, it states "If you witnessed a possible violation of the WHO Code or Executive Order No. 51 and its Revised Implementing Rules and Regulations, alert us through our Reporting Form." There is no link to a reporting form, so we understand this to mean the contact form for the Wyeth Nutrition Careline. Equally, our search on the Wyeth global website did not show a relevant link for Tell Us. There is a 'Contact Us' section of the website where a user can contact regarding a comment, complaint or question.
3. **Expanding reach:** Nestlé are creating a training module for external audiences via an app and a "Do's and Don'ts" awareness video which will be publicly available online. Nestlé hopes to launch this in the next two years.

### 3.1.7. Internal monitoring

1. **Allegation response monitoring:** Nestlé has a procedure in place for recording external stakeholders' allegations of non-compliances. The target time for responding to allegations is within 25 working days, as stated within the BMS Corporate Procedure Manual. Nestlé have a formalised process in place for analysing target vs actual performance, to ensure timeliness of response to allegations. The assessment is performed once a year and the result of the assessment is delivered to the Nestlé Nutrition Compliance Manager. We have obtained and inspected the 2018 and 2019 annual external reports representing their WHO Code compliance records. A summary of adherence, non-compliance and corrective actions was included in these reports.
2. **In-country internal monitoring:** The Nestlé team in the Philippines confirmed that internal monitoring is seen as intrinsic to their ways of working with employees trained in the requirements of the WHO Code, National Code and Nestlé BMS policy, and are required to report on non-compliances observed as part of their daily activities (e.g. field and trade visits). Reference to internal monitoring of compliance in the Country Procedure Manuals does not explicitly include the four key areas of the Criteria. Non-compliances are logged in the Code Room, a central repository where non-compliances are reported, and remediation plans and identification of improvement opportunities are recorded. Media monitoring of the contractual e-commerce partners (Lazada and Shopee) is also performed.

Area	Factual Findings
<p><b>3.1.8. External/ Independent assessments</b></p>	<ol style="list-style-type: none"> <li data-bbox="465 121 1841 301"> <p><b>1. Internal Audit:</b> Nestlé have an Internal Audit function, which based on our interviews at Corporate Head Office, perform audits over 25-30 high-risk countries every year. Each auditable entity (e.g. HQ, warehouse) is visited, at a minimum, once every four years. An audit that results in any findings is reperformed within 2 years. A risk-based approach is used to target new businesses and locations. Internal Audit does not perform a standalone WHO Code compliance audit. However, WHO Code compliance is included as part of the broader Nutrition business audit scope. The audit testing approach includes interviews, reviews and visits to assess key areas of the BMS Policy. At the time of our Philippines visit, the Nestlé team in the Philippines confirmed that their sales and distribution function had been subjected to an internal audit review within the last year.</p> </li> <li data-bbox="465 334 1841 459"> <p><b>2. External assessments:</b> Nestlé engages Bureau Veritas (BV) to perform external audits. BV perform 1-3 audits in high-risk countries per year. In 2019, the locations selected were the Dominican Republic and Bolivia. Nestlé Philippines was last audited by BV in 2010. On an annual basis, the Audit Committee approves an overall audit plan, which includes external and internal audits. The Public Affairs department is responsible for choosing the external assurance provider each year and before the selection is made, the independence and the competence of the external assurance provider is assessed.</p> </li> </ol>
<p><b>3.1.9. Allegation handling and reporting</b></p>	<ol style="list-style-type: none"> <li data-bbox="465 503 1841 628"> <p><b>1. Head Office:</b> During interviews performed at the Corporate Head Office, we were informed that all complaints are logged into the Code Room. The Code Room was launched in 2017, replacing a previous system in place called Early Warning. The Code Room is used by the Corporate Head Office team to interact with the in-country teams, to monitor compliance with legislation and to have visibility of WHO code non-compliance. A Code Room delegate is appointed in every market. The Code Room is used by the Corporate Head Office to collate information and produce summary reports.</p> </li> <li data-bbox="465 661 1841 841"> <p><b>2. Philippines:</b> We were informed that the Philippines team report all allegations of non-compliance to the Code Room. The Head of Milk Code Compliance is the appointed Code Room delegate. When questioned further, it was noted that if a finding raised through internal monitoring is considered a ‘one off’, it will not be logged in to the Code Room. Only if the finding recurs, will it be logged into the Code Room. The Head of Milk Code Compliance confirmed that they retain records (emails with photos and reports submitted by email) that Corporate Head Office can check at anytime to verify any submission made in the Code Room. They also confirmed that as part of Nestlé Internal Audit reviews, the Internal Audit team will select a sample of a market’s instances of non-compliance, and request that the local team show them the supporting documentation relating to those cases. If this could not be provided, an exception would be noted.</p> </li> </ol>

## 3.2. Westat factual findings

The findings below summarise the results of the procedures described in section 1.3. There are no images in relation to findings from health care worker interviews.

Area	Factual Findings
<b>3.2.1. Health care worker interviews</b>	<p>23 findings noted. As these findings are based on inquiry, no materials can be inspected to verify details. Such findings can be subject to recall bias by the person being interviewed.</p> <p>14 of the findings were non-compliances with WHO Article 6, the breakdown of which is as follows:</p> <ul style="list-style-type: none"><li>• Article 6.2: 3 offers of promotional materials for specific products</li><li>• Article 6.2: 3 offers of promotional materials for use within the HCF</li><li>• Article 6.3: 6 offers of informational or educational material to provide to mothers/caregivers</li><li>• Article 6.3: 2 cases of asking to display products or conduct promotional activity at the facility</li></ul> <p>9 of the findings were non-compliances with WHO Article 7 the breakdown of which is as follows:</p> <ul style="list-style-type: none"><li>• Article 7.2: 2 offers of informational and educational materials for use within the HCF</li><li>• Article 7.3: 1 offer of product coupons</li><li>• Article 7.3: 1 gift</li><li>• Article 7.4: 5 offers of samples of baby milks (the exact age group of the samples of products being offered were unconfirmed, however all findings were for products between 0-36 months)</li></ul>
<b>3.2.2. Information and education materials and equipment (HCFs and retailers)</b>	No findings noted.
<b>3.2.3. Traditional media</b>	No findings noted.
<b>3.2.4. Online media</b>	No findings noted.
<b>3.2.5. Labels</b>	No findings noted.

Area	Factual Findings
<b>3.2.6. Promotion on online retailer sites</b>	<p>2 findings noted. Price related promotion on Lazada.com.ph, with whom Nestlé have a contractual relationship, were noted for the following two products:</p> <ul style="list-style-type: none"><li data-bbox="510 203 919 224">• Nestogen Low Lactose (0-12 months)</li><li data-bbox="510 227 962 248">• Nestogen 2 Infant Formula (6-12 months)</li></ul> <p>The promotion was: "Discounted price (-2%) + "cash-in wallet and win P1,000"" See Appendix 4 for images of the online promotions.</p>
<b>3.2.7. Promotion in physical retailers</b>	No findings noted.

## 4. Update on previous findings

The findings below were identified during PwC's 2016/17 verification assessment. The countries visited for this assessment were Nigeria and Thailand. For each finding, PwC has reviewed the finding and commented on current year observations.

Previous finding	2019/20 update	Related Tool Criteria
<p>1. <u>Procedures to ensure that stakeholders outside its boundaries of control (e.g. retailers or HCFs) are aware of the requirements of the company policy:</u> WHO code annual reminder letters and retailer 'do's and don'ts' leaflets are not consistently provided to HCFs who sell or distribute BMS, or to retailers who purchase BMS through Nestlé's contractual distributors, in Thailand and Nigeria.</p>	<p>No observations noted by Westat with respect to information and education materials and equipment being provided to HCFs. HCF visits were not in the scope of work performed by PwC for this verification assessment. As noted in finding 3.1.6.1, during our Head Office interviews, Nestlé confirmed that distributors are required to send letters to retailers, reminding them of requirements with respect to BMS. During our distributor interviews in the Philippines, all three selected distributors confirmed that the sending of letters is a contractual requirement with Nestlé. The distributors also confirmed that they are required to obtain an acknowledgement from the retailer in response, to ensure that they have read, and agreed to adhere to, the requirements. The Nestlé team in the Philippines confirmed to us that non-compliances at non-contractual partners, noted during the course of field visits and trade visits are brought to the offender's attention immediately. The offenders are also provided with "Do's and Don'ts" materials.</p>	<p>Management systems: FTSE Criteria 1.1</p>
<p>2. <u>Payment relating to conferences:</u> Nestlé's policy states that sponsorship of health workers is limited to the payment of travel, meals, accommodation and registration fees and that no stand-alone entertainment or other leisure or social activities shall be provided or paid for. 3 out of 82 HCPs interviewed in Thailand stated their perception of an annual 2 day conference where travel, subsistence and personal entertainment expenses were paid for by Nestlé. We were unable to obtain confirmation of the nature of the expenses paid for by Nestlé</p>	<p>No observations noted by Westat with respect to payments related to conferences. HCP interviews were not in the scope of work performed by PwC for this verification assessment.</p>	<p>Management systems: Additional Assessment Measures 1.5</p>
<p>3. <u>Materials on display in public areas at HCFs:</u> At 5 of 35 HCFs visited in Nigeria, posters with the Nestlé Nutrition brand and message "Breastfeeding is best" were observed in rooms visible to the general public. While the Criteria</p>	<p>No observations noted by Westat with respect to information intended for Health Care Professionals being available to the general public. HCF visits were not in the scope of work performed by PwC for this verification assessment.</p>	<p>Management systems: Additional</p>

Previous finding	2019/20 update	Related Tool Criteria
<p>permits material donated to a health care system to bear the company name or logo, the posters were labelled as ‘information for Healthcare Professionals only.’ We were unable to obtain any display instructions communicated to the HCF on receipt of the posters.</p>		<p>Assessment Measures 1.2</p>
<p>4. <u>Distributor knowledge of company policy:</u> 3 HCPs at 3 out of 13 private HCFs visited in the urban areas of Bangkok stated that the HCF provides Wyeth BMS to all new mothers as part of their birthing package. Furthermore, Nestlé sells BMS directly to these facilities via a contractual distributor. We were unable to ascertain from the HCFs purchasing department whether Nestlé or the distributor provides any guidance in this regard.</p>	<p>No observations noted by Westat with respect to birthing packages containing Nestlé/Wyeth BMS products. HCF visits and HCP interviews were not in the scope of work performed by PwC for this verification assessment.</p>	<p>Management systems: FTSE Criteria 1.1 and Additional Assessment Measures 1.3 and 1.4</p>
<p>5. <u>Distribution of free supplies to HCPs:</u> 5 out of 170 HCPs visited in Nigeria and Thailand, stated that free supplies of stage 1 and 2 BMS were given by Nestlé representatives. In Thailand, 1 HCP out of 82 interviewed stated they had received 12 boxes of "sample size" BMS from Nestlé. We were unable to obtain any evidence of these samples.</p>	<p>As noted in finding 3.2.1, Westat identified 5 offers of samples of baby milks (exact age group unconfirmed, confirmed for milks up to age of 36 months). HCP interviews were not in the scope of work performed by PwC for this verification assessment.</p>	<p>Management systems: Additional Assessment Measures 1.4 and 1.5</p>
<p>6. <u>Training for medical delegates around contact with mothers:</u> Nestlé medical delegates undergo training prior to entering the field, which covers what is and is not permitted in the capacity of a medical delegate. 5 HCPs interviewed from different HCFs in Thailand and Nigeria stated that they observed demonstrations performed by Nestlé medical delegate at their HCF, where mothers were present. We were unable to obtain any evidence of this discount or that mothers were present at the demonstrations. Further, in Thailand, 1 HCP out of 82 interviewed stated that a Nestlé medical delegate had approached her, in her capacity as a mother at the HCF, to offer discounted BMS.</p>	<p>As noted in finding 3.2.1, Westat identified 1 offer of product coupons. No findings noted by Westat from interviews with healthcare workers of any attempt to make direct contact with mothers, including through product demonstrations by Nestlé medical delegates where mothers were present. HCP interviews were not in the scope of work performed by PwC for this verification assessment.</p>	<p>Management systems: Additional Assessment Measures 1.3 and 1.4</p>

## Previous finding

## 2019/20 update

## Related Tool Criteria

7. Provision of guidance to third parties: Retailers who purchase BMS from third party distributors do not receive:

- Annual letters to acknowledge compliance with the WHO code; or
- Illustrative 'Do's and Don'ts' leaflets. Retailers who purchase BMS directly from Nestlé receive the above documents.

As noted in finding 3.1.6.1, during our Head Office interviews, Nestlé confirmed that distributors are required to send letters to retailers, reminding them of requirements with respect to BMS. During our distributor interviews in the Philippines, all three selected distributors confirmed that the sending of letters is a contractual requirement with Nestlé. The distributors also confirmed that they are required to obtain an acknowledgement from the retailer in response, to ensure that they have read, and agreed to adhere to, the requirements.

Management systems: FTSE Criteria 1.1

The Nestlé team in the Philippines confirmed to us that non-compliances at non-contractual partners, noted during the course of field visits and trade visits are brought to the offender's attention immediately. The offenders are also provided with "Do's and Don'ts" materials.

8. Parallel imports of BMS from lower-risk countries by third parties: Independent parallel imports by third parties of products from lower-risk countries were seen in over half the total number of retailers visited. They are not NAFDAC approved. In the past, Nestlé has stated they have limited influence over how its BMS are commercialised, as this violation is by third parties with whom Nestlé has no commercial relationship. This matter was brought to our attention by Nestlé, and continues to be an issue.

A large number of parallel imports were identified by Westat. Nestlé was made aware of the parallel imports found by Westat, but findings related to those products are excluded from the Westat report and ATNI's scoring system.

N/A

9. Inappropriate product promotion by retailers: Retailers inappropriately promoted in-scope products:

- In 1 retailer out of 41 visited in Nigeria, in-scope product was on sale for a lower price when compared to prices in other retailers. This was not labelled as a discount in-store;
- In 1 retailer out of 41 in Nigeria, and 4 retailers out of 45 visited in Thailand, we observed the use of shelving strips with "Choose Quality Choose Nestlé" "Nestlé" or "Wyeth Nutrition" under the BMS products;
- BMS are displayed at the front of the store, stacked on table-tops, in small stores and open market stalls across Lagos for Nestlé and other BMS manufacturers; and

As noted in finding 3.2.6, Westat identified 2 price related promotions on Lazada e-commerce website, with whom Nestlé have a contractual relationship. No observations noted by Westat with respect to traditional retailers. Retailer visits (traditional and online) were not in the scope of work performed by PwC for this verification assessment.

Management systems: FTSE Criteria 1.1

Previous finding	2019/20 update	Related Tool Criteria
<p>- BMS from a range of BMS manufacturers were pictured on a banner outside 1 independent retailer, out of 30 retailers visited, in Bangkok.</p>		
<p>10. <u>Marketing activity for out of scope products</u>: Advertising was noted in Thailand for milk powder products for use of infants over 12 months (stage 3 products). Adverts for stage 3 products are out of scope of the Code but are accompanied by the use of product logos that are associated with the product brands of stage 1 and 2 infant formula (i.e. 0-12 months).</p>	<p>Westat findings provided to PwC only cover products for 0-12 months. There are no updates available with respect to this finding. Media monitoring was not in the scope of work performed by PwC for this verification assessment.</p>	<p>Management systems: Additional Assessment Measures 1.3</p>

# Appendices



# Appendix 1 - Interviews and meetings

Corporate Head Office	Philippines Head Office	Distributors visited in the Philippines
Business Compliance Manager Americas Nutrition	<b>Nestlé:</b>	<b>Nestlé:</b>
Business Compliance Manager Asia-Africa-Oceania Nutrition	Head of Milk Code Compliance	Right Goods South Operations Inc.
Business Compliance Manager Europe Middle-East North Africa Nutrition	Business Compliance Manager Asia-Africa-Oceania Nutrition	Right Moves Inc.
Chief Compliance Officer	Head of Corporate Affairs and Communication	<b>Wyeth:</b>
Corporate Affairs Coordinator	Country Business Manager	Cosmo Fortune Inc.
Deputy Head of Global Public Affairs	Policy and Compliance Manager – Global Public Affairs	
Global Head ASET Training	Retail Sales Manager	
Head of Global Medical Affairs, Nutrition SBU	<b>Wyeth:</b>	
Head of Nutrition SBU	Chief Finance Officer	
Medical Marketing Manager, IFFO & GUMs	Regulatory Officer	
Nestlé Internal Audit Manager	Sales Operations Manager	
Nutrition SBU General Counsel		
Nutrition SBU Head of Corporate Affairs		
Policy and Compliance Manager – Global Public Affairs		

# Appendix 2 - Summary scoring

The table below provides an overview of the 2019/20 findings as they relate to the Tool Criteria. PwC findings are indicated by areas shaded in **yellow**. Westat findings are indicated by areas shaded in **blue**.

Policy Criteria		
Criteria	2019/20 Verification Assessment	
	Corporate	Philippines
FTSE Criteria 1: Company policy should be publicly available and include acknowledgement of the importance of the International Code of Marketing of Breast Milk Substitutes, and subsequent relevant WHA resolutions, hereafter referred to as 'the Code'.		
FTSE Criteria 2: Naming the person responsible at Corporate Executive Board level or Executive Management level and at the individual country level for the implementation and monitoring of the policy.		
FTSE Criteria 3: Acknowledgment that, independently of any other measures taken by governments to implement the Code, manufacturers are responsible for monitoring their marketing practices according to the principles and aim of the Code, and for taking steps to ensure that their conduct at every level conforms to their policy in this regard.		
FTSE Criteria 4: Acknowledgment that the adoption and adherence to the Code is a minimum requirement for these countries 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 (Additional Policy Criteria with Regards to Company Operations in High Risk Countries).		
FTSE Criteria 5: Explicit confirmation that there will be no advertising or promotion of infant formula, follow-on-formula products, or delivery products (i.e. teats and bottles) in these countries (Additional Policy Criteria with Regards to Company Operations in High Risk Countries).		
FTSE Criteria 6: Explicit confirmation that complementary (weaning) foods and drinks will not be promoted for the use of infants under the age of six months in these countries (Additional Policy Criteria with Regards to Company Operations in High Risk Countries).		
FTSE Criteria 7: Commitment to follow all national regulations in relation to the marketing and promotion of breast milk substitutes (Additional Policy Criteria with Regards to Company Operations in Low Risk Countries).		

## Corporate public policy and lobbying of regulators

Criteria	2019/20 Verification Assessment	
	Corporate	Philippines
FTSE Criteria 1: Companies have a valid and important engagement role in the development of effective and appropriate legislation. They should have clear, openly-stated and enforceable policies on the objectives and practice of their political lobbying regarding government's implementation of the Code, and specifically companies must be open about their objectives, and make position papers publicly available to demonstrate consistency.		
FTSE Criteria 2: Seek to ensure that the trade associations and industry policy groups, to which they belong, operate to the same high standards with membership of such organisations being disclosed.		

## Management systems

Criteria	2019/20 Verification Assessment	
	Corporate	Philippines
FTSE Criteria 1.1: Clear communication of the company policies, procedures for its implementation throughout the production and marketing processes, and provision of training in its application, to senior management and all relevant marketing staff operating in the high risk countries.		
Additional Assessment Measures 1.2: Information and Education		
Additional Assessment Measures 1.3: General Public and Mothers		
Additional Assessment Measures 1.4: Health Care Systems		
Additional Assessment Measures 1.5: HealthWorkers		
Additional Assessment Measures 1.6: Persons Employed By Manufacturers and Distributors		
Additional Assessment Measures 1.7: Labelling		
Additional Assessment Measures 1.8: Quality		

## Management systems

Criteria	2019/20 Verification Assessment	
	Corporate	Philippines
FTSE Criteria 2: Clear accountability and responsibility within the Company for the implementation of systems for compliance with policy at all levels.		
FTSE Criteria 3: Whistle-blowing procedures that allow employees to report outside their normal management reporting line potential non-compliance with company policy in a way that protects them from possible negative consequences of such reporting.		
FTSE Criteria 4.1: Ongoing systematic internal monitoring of compliance with policy.		
Additional Assessment Measures 4.2: Implementation and Monitoring		
FTSE Criteria 5: Systems for investigating and responding in a timely manner to alleged Non-compliance reported by governmental bodies, professional groups, institutions, NGOs or other individuals from outside the Company.		
FTSE Criteria 6: Systems for taking, as well as tracking, corrective action on all non-compliance cases, both internally and externally reported.		
FTSE Criteria 7: Regular external verification to provide evidence of well-functioning Policy compliance management and monitoring systems, conducted by a suitably qualified external expert.		
FTSE Criteria 8: In addition to management reviews, the production of annual summary reports to the Board of Directors on internal monitoring, external reporting and corrective actions taken regarding noncompliance.		
FTSE Criteria 9: In addition for operations in high risk countries, companies must provide to the FTSE BMS Committee, on request, copies of any related marketing literature and product labelling and inform the Committee (Additional Policy Criteria with Regards to Company Operations in High Risk Countries).		

## External Reporting

Criteria	2019/20 Verification Assessment	
	Corporate	Philippines
FTSE Criteria 1: Adequate Company reporting procedures should include making annual summary reports available on adherence to policy, non-compliance, and corrective action taken.		

# Appendix 3 - PwC evidence images

This appendix contains images to support PwC findings.

## 3.1.5.2. Posters identified at Nestlé distributors, but not at the Wyeth distributor

Nestlé distributor 1 (noted on door inside warehouse)



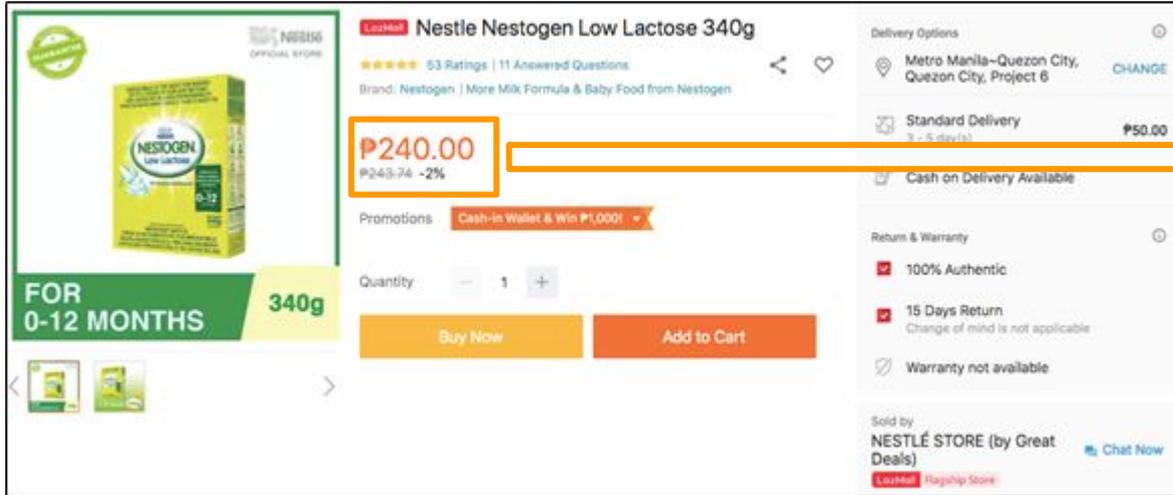
Nestlé distributor 2 (noted on staircase up to office and another one in office corridor)



# Appendix 4 - Westat evidence images

This appendix contains images provided by Westat which support their findings. There are no images in relation to findings from health care worker interviews.

## 3.2.6. Promotion on online retailer sites



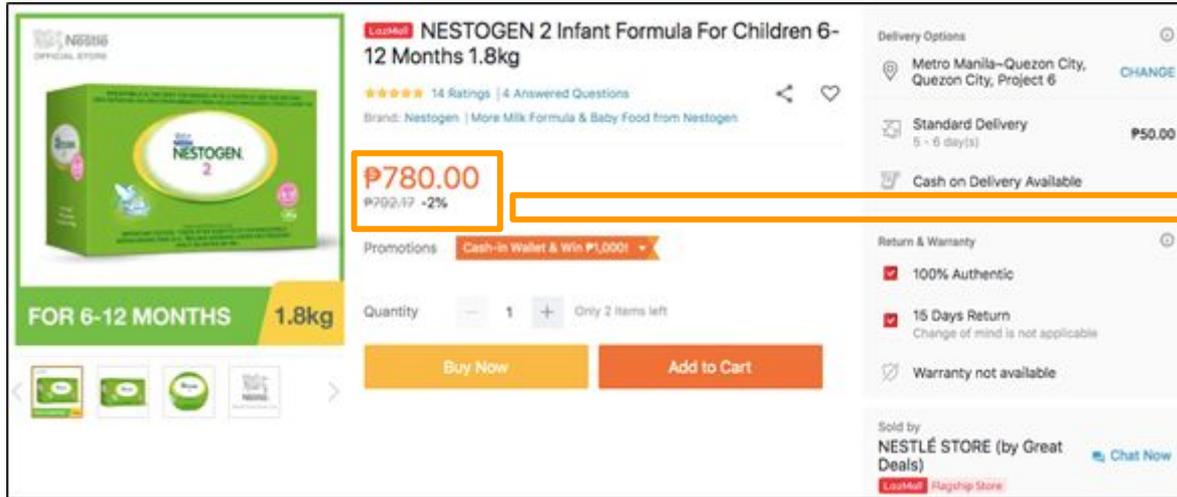
Price related promotion on Lazada.com.ph.

Discounted price (-2%) + "cash-in wallet and win P1,000"

# Appendix 4 - Westat evidence images

This appendix contains images provided by Westat which support their findings. There are no images in relation to findings from health care worker interviews.

## 3.2.6. Promotion on online retailer sites



Price related promotion on Lazada.com.ph.

Discounted price (-2%) + "cash-in wallet and win P1,000"

# Appendix 5 - Definition of terms

Term/ Document	Definition
BMS	Breast Milk Substitutes
BMS Corporate Procedure Manual	The following document created at Corporate Head Office: WHO International Code of Marketing of Breast Milk Substitutes Corporate Procedure Manual
Code	World Health Organization International Code of Marketing of Breast Milk Substitutes
Corporate Head Office	Nestlé Head Office in Vevey, Switzerland
FSMP	Food for special medical purposes
HCFs	Health Care Facilities
HCPs	Health Care Professionals
National Code	The Philippine Code of Marketing of Breast Milk Substitutes, Executive Order 51 (EO51), 1986, also known as the “Milk Code”, and the revised Implementing Rules and Regulations of the Milk Code, 2006 (“RIRR”)
Nestlé’s BMS Policy	The following document created at Corporate Head Office: The Nestlé Policy and Procedures for the Implementation of the WHO International Code of Marketing of Breast Milk Substitutes

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