

ACCESS TO  
**NUTRITION**  
INITIATIVE

## **US country study**

Marketing of Breast-milk  
Substitutes and  
Complementary Foods

April 2024



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# Abbreviations

|               |  |
|---------------|--|
| <b>ATNI</b>   | Access to Nutrition Initiative                                 |
| <b>BMS</b>    | Breast-milk substitutes  |
| <b>CDC</b>    | Centers for Disease Control and Prevention                     |
| <b>CF</b>     | Complementary foods (commercially produced)                    |
| <b>COMMIT</b> | Consortium for Improving Complementary Foods in Southeast Asia |
| <b>EAPRO</b>  | East Asia and the Pacific Regional Office                      |
| <b>FDA</b>    | Food and Drug Administration                                   |
| <b>FUF</b>    | Follow-up formula  |
| <b>GNI</b>    | Gross National Income  |
| <b>GUM</b>    | Growing-up milk  |
| <b>IBFAN</b>  | International Baby Foods Action Network                        |
| <b>IF</b>     | Infant formula   |
| <b>NGO</b>    | Non-governmental Organization                                  |
| <b>SDG</b>    | Sustainable Development Goals                                  |
| <b>UNICEF</b> | United Nations Children's Fund                                 |
| <b>WHA</b>    | World Health Assembly  |
| <b>WHO</b>    | World Health Organization                                      |

# About the Access to Nutrition Initiative

The Access to Nutrition Initiative (ATNI) is a global nonprofit established in 2013 to transform markets so they provide more nutritious, affordable, and sustainable foods for all. ATNI empowers key actors in the global food system and at national levels – especially industry and investors – to accelerate access to nutritious, affordable, and sustainable foods for all.

ATNI – which is funded by governments and philanthropies – is dedicated to objectively assessing and improving the contribution made by the private sector to addressing global nutrition challenges. ATNI does this by designing and regularly publishing various indexes and other private sector accountability tools. These indexes and tools measure and track, over time, the extent to which companies are working to increase consumers' access to healthy foods and responsibly exercising their influence on consumer choice and behavior.

More about ATNI can be found on our website:

<https://accesstonutrition.org/mission-vision-values/>



# Executive summary

ATNI periodically assesses the extent to which companies that make formulas and foods for infants and young children market their products in line with the prevailing international gold standard: the 1981 International Code of Marketing of Breast-milk Substitutes<sup>a</sup>. The Code lays provisions on the responsible marketing of breast-milk substitutes (BMS) and complementary foods (CF)<sup>b</sup>.

ATNI's BMS and CF Marketing Indexes 2024 assess the 20 largest baby food companies globally.<sup>c</sup> In addition to these global results, five country markets have been assessed, including the US. This report summarizes the context of the BMS and CF market in the US and presents the country findings. Seven companies were included in this assessment: Abbott, Danone, Hain Celestial, Hero Group, Lactalis, Nestlé, and Reckitt. Together, they comprise more than 80% of the US' baby food market.<sup>d</sup> Three of these companies – Danone, Hain Celestial, and Nestlé – produce both BMS and CF.

For this research ATNI assessed compliance with the International Code of Marketing of Breast-milk Substitutes, relevant subsequent WHA resolutions and WHO Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children. ATNI did not assess compliance with local regulations or laws.

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<sup>a</sup> Here we include all subsequent, relevant World Health Assembly (WHA) resolutions up to WHA 71.9, collectively referred to hereinafter as 'the Code'.

<sup>b</sup> For the purpose of this report that focused on the assessment of industrial food products, when the term complementary foods or the acronym CF is used, it refers to commercially or industrially produced complementary foods.

The number of incidences of non-compliance for both BMS and CF varied between the companies. However, **none of the seven companies assessed during the research period of January 2023 to July 2023 market their BMS and/or CF products in the US fully in line with the Code.**

For BMS products, a total of 123 incidences of non-compliant marketing practices were found during the research period – of which 45 were from online media, two from television, and all 76 product labels assessed were found to be non-compliant with the Code. The majority of the observed incidences of non-compliance were related to infant formula (74 out of 123).

For CF products, a total of 189 incidences of non-compliant marketing practices were found during the research period - of which 73 were from online media, two from television, and all 114 product labels assessed were found to be non-compliant with the Code. Three CF products were labelled as suitable for under six months during the time of research, while these products should not be available on the market as per the Code.

This report presents the key observations behind these incidences of non-compliance and provides recommendations for improvements.

ATNI recommends that companies strengthen their marketing policies and ensure their marketing practices comply fully with the recommendations of the Code and all subsequent relevant resolutions, including the guidance supported by World Health Assembly (WHA) resolution 69.9.

Companies should play their part in contributing to optimal infant and young child nutrition, particularly those set by the World Health Organization (WHO) for 2025 and national governments, which combat growing levels of

<sup>c</sup> The selection is based on 2021 retail sales estimates from Euromonitor International.

<sup>d</sup> Based on Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved



overweight and obesity and reduce deaths and illness from diet-related chronic diseases.<sup>1</sup> As there are currently no legal measures on national implementation of the International Code in place in the US, policy makers are encouraged to ensure these are developed. The findings presented in this study could be used to identify which areas need to be considered with most urgency.

Incidences of non-compliance  
with the Code in the USA

**BMS**



Incidences of non-compliance  
with the Code in the USA

**CF**







# 1. Introduction

The Access to Nutrition Initiative (ATNI) is dedicated to objectively assessing and improving the contribution made by the private sector to addressing global nutrition challenges. ATNI does this by designing and regularly publishing various indexes and other private sector accountability tools. These indexes and tools measure and track, over time, the extent to which companies are working to increase consumers' access to healthy foods and responsibly exercising their influence on consumer choice and behavior.

One of ATNI's core activities is assessing the extent to which companies that make formulas and foods for infants and young children market their products in line with the prevailing international gold standard: the 1981 International Code of Marketing of Breast-milk Substitutes including all subsequent, relevant World Health Assembly (WHA) resolutions up to WHA 71.9, collectively referred to hereinafter as 'the Code'. The Code lays provisions on the responsible marketing of breast-milk substitutes (BMS) and complementary foods (CF). For the purpose of this report that focused on the assessment of industrial food products, when the term complementary foods or the acronym CF is used, it refers to commercially or industrially produced complementary foods.

Companies are expected to play their part in contributing to optimal infant and young child nutrition and achieving nutrition goals, particularly those set by the World Health Organization (WHO) for 2025 and national governments to combat growing levels of overweight and obesity and reduce deaths and illness from diet-related chronic diseases<sup>2</sup> - by complying with the Code and relevant national legal measures.

This report summarizes the context of the BMS and CF market in the United States (US) and presents the country findings of the BMS Marketing and the CF Marketing Indexes 2024 for the US.

## The importance of infant and young child nutrition and the Code

Adequate nutrition is particularly important within the first 1,000 days of a child's life (from conception to age two), a critical stage that shapes optimal growth and development.

The WHO recommends that infants everywhere be exclusively breastfed for the first six months, at which point safe, adequate and nutrient-rich foods should be introduced when breastmilk or milk formula alone are no longer adequate to meet the nutritional requirements of growing infants. This period is also known as complementary feeding, which generally starts at the age of six months and lasts up to 23 months of age, although breastfeeding may continue beyond this period as recommended by WHO<sup>e</sup>.

Optimal breastfeeding has myriad benefits on infants and young children and their mothers. Breastmilk is the most sustainable and nutritious source of food for infants carrying protective factors that safeguard children's health and their future well-being<sup>3 4</sup>. Studies estimate that breastfeeding can help prevent around 823,000 deaths in children younger than five years and 20,000 deaths in mothers from breast cancer annually<sup>5</sup>.

Nevertheless, while breastfeeding up to the age of two years is encouraged, the importance of appropriate complementary foods from the age of six months onwards should not be overlooked. The complementary feeding period

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<sup>e</sup> "Infant and Young Child Feeding," December 20, 2023, <https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding>.



is critical to prevent all forms of childhood malnutrition, including stunting, wasting, micronutrient deficiencies, overweight, obesity and diet-related non-communicable diseases<sup>6</sup>. Complementary foods of poor nutritional quality, like those that are high in sugar and calories, can contribute to weight gain, while those of suitable nutritional quality have the potential to reduce stunting in young children<sup>7</sup>. These foods should have appropriate energy density, macronutrient levels and levels of micronutrients, either inherently or through fortification, to provide all of the vitamins and minerals essential to healthy development<sup>8</sup>.

Due to the sub-optimal rates of breastfeeding worldwide, and continuing infant mortality and poor health outcomes, in 2014, WHO set the global target for 2025 of achieving 50% exclusive breastfeeding in the first six months of age in all countries and regions<sup>9</sup>. This target was extended in 2016 to at least 70% exclusive breastfeeding by 2030<sup>10</sup>. The latest UNICEF estimates of exclusive breastfeeding rates during the first six months of life show that globally, as of 2022, exclusive breastfeeding is up to 48% and on track to reaching the 2025 target but remains far from the 2030 target. It is worth noting that there are regional disparities as six of the nine global UNICEF regions have rates below 50%, while Western Europe has no regional data on these practices, and only South Asia and Eastern and Southern Africa surpass the 2025 target<sup>11</sup>.

Latest UNICEF estimates show that in 2021, only 18% of older infants and young children between 6-23 months of age globally consumed a minimum acceptable diet that is sufficient in diversity and frequency as per complementary feeding recommendations<sup>12</sup>.

With a rise in urbanization and income growth, coupled with inadequate parental work policies and insufficient health care advice, parents are faced with various challenges to practice optimal infant and young feeding<sup>13</sup>. Furthermore, the baby food market, consisting of breast-milk substitutes and commercial complementary foods, is also growing<sup>14</sup>, and studies are showing

that these products are increasingly becoming a part of infant and young children's diets.

Evidence shows that the inappropriate marketing of breast-milk substitutes undermines breastfeeding. The analyses revealed that BMS sales were inversely associated with breastfeeding at one year of age in 126 countries. In addition, many commercial complementary foods are marketed as suitable from four months of age, potentially displacing breastmilk in the first six months of life as recommended by WHO<sup>15</sup>.

A recent study (2023) of mothers surveyed in five Southeast Asian countries revealed that more than one-third of them gave commercial complementary foods to their 6-23 month old child at least once a day, and almost half of mothers fed their child such products at every or most feedings or meals. While factors such as convenience and affordability influenced the purchase of these products, the mothers reported that the perceived nutritional benefits of commercial complementary foods were a primary reason for resorting to these foods<sup>16</sup>.

The responsible marketing of breast-milk substitutes and commercial complementary foods is imperative to ensure that they are not promoted in any way that would influence caregivers' decisions in feeding their infants and young children.

The WHO has been responding to concerns about irresponsible marketing of foods for infants and young children since 1981, when the International Code of Marketing of Breast-milk Substitutes was adopted by the World Health Assembly (WHA) as a minimum requirement to protect and promote appropriate infant and young child feeding. It sets out, inter alia, provisions on the appropriate labeling of breast-milk substitutes and restrictions on the promotion of these products in public settings and within the healthcare system<sup>17</sup>. Since 1981, several WHA resolutions have been passed that augment or reinforce the original Code given the evolving marketing



challenges<sup>18</sup>. The resolution adopted in May 2016, WHA resolution 69.9, extended the scope of products covered by the Code to include any milks (or products that could be used to replace milk, such as fortified soya milk alternatives), in either liquid or powdered form, that are specifically marketed for feeding older infants and young children up to the age of three years<sup>19</sup>. This resolution also supported the WHO Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children which introduced recommendations for the appropriate marketing of commercial complementary foods marketed as suitable for older infants and young children aged between 6 and 36 months<sup>20</sup>.



## 2. Context for the US study

### Infant and young child feeding practices in the US

According to the Centers for Disease Control and Prevention (CDC) National Immunization Survey, of US children born in 2020, exclusive breastfeeding rates showed a slight upward trend overtime, with exclusive breastfeeding through three months increasing from 44.4% in 2013 to 45.3% in 2020, and exclusivity through six months from 22.3% to 25.4% over the same period<sup>21</sup>. This is in line with the regional (26%) average rate, though considerably lower than the global (48%) average rate of exclusive breastfeeding within this age group based on the latest UNICEF estimates.<sup>22</sup> This also falls short of the WHA target of increasing the rate of exclusive breastfeeding to at least 50% by 2025<sup>23</sup>.

In addition:

- 83.1% were ever breastfed (increasing from 81.1% in 2013),
- 58.2 were breastfed at 6 months (increasing from 51.8% in 2013)
- 37.6% were breastfed at 12 months (any breastfeeding) (increasing from 30.7% in 2013)<sup>24</sup>

The Cost of Not Breastfeeding tool showed that, as of December 2022, an estimated 424,249 deaths globally of children between birth and 23 months can be attributed each year to inadequate breastfeeding according to WHO recommendations<sup>25</sup>. In the US in particular, based on the current breastfeeding rates it is estimated that<sup>26</sup>:

- 284 annual child deaths from diarrhea and acute respiratory illness could be prevented if breastfeeding practices were in line with public health guidance in the US.

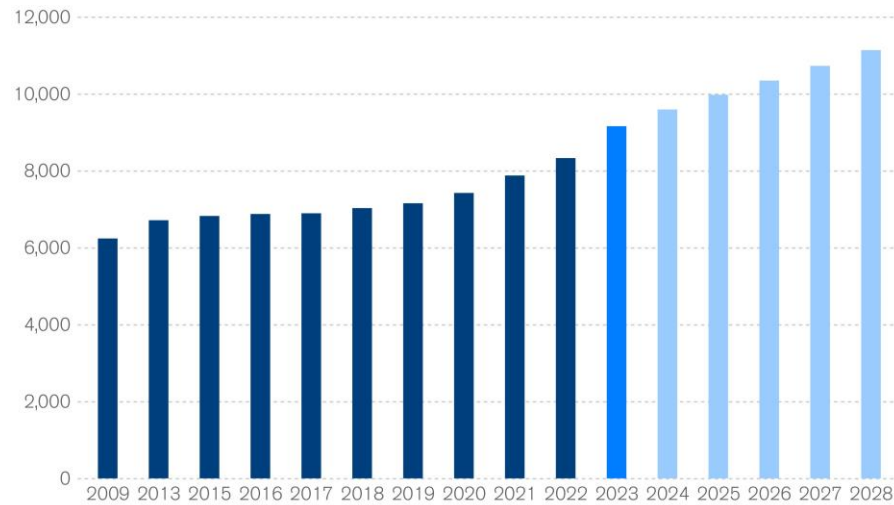
- 85,370 cases of child obesity per year could be attributed to suboptimal breastfeeding rates in the US.
- For mothers in the US, inadequate breastfeeding leads to around 1,700,159 cases of type II diabetes, and 29,948 cases of breast and ovarian cancer each year.
- The total annual health-related costs in the US of not breastfeeding (including mortality, morbidity, and health system costs) are estimated to amount to USD 167.9 billion, or 0.72% of Gross National Income (GNI).
- Inadequate breastfeeding has human capital costs, leading up to an annual loss of 2,757,211 school years in the US.

### The US infant and young child food market

Globally, the baby food market is growing, reaching over USD 71 billion in 2022, an increase from over USD 68 billion in 2018. As seen in Figure 1, the baby food market in the US is worth approximately USD 8.3 billion (2022), an increase from approximately 7 billion in 2018. The market is forecast to see continued growth in the future, according to Euromonitor reaching a market value of approximately USD 11 billion by 2028<sup>27</sup>.



**Figure 1. Sales of baby foods in the US (USD million)**

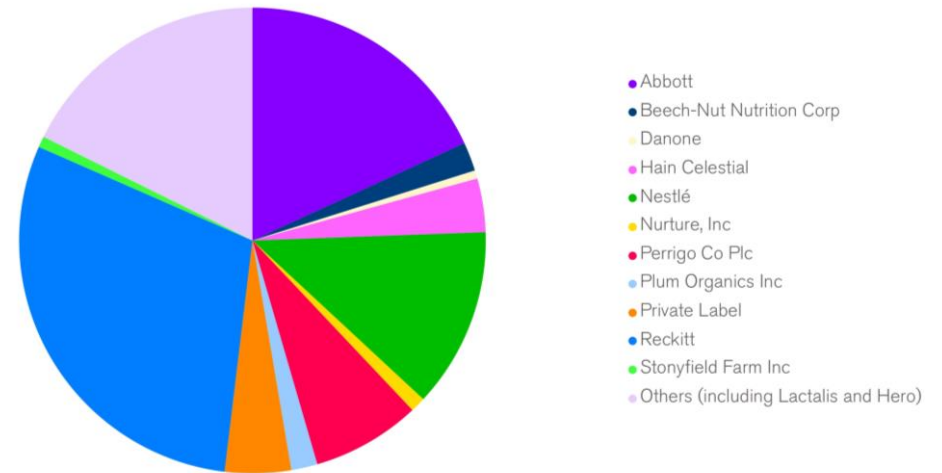


Source: Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.

The companies Abbott, Nestlé, and Reckitt collectively hold more than 60% of the baby food market in the US (Figure 2).

<sup>f</sup> Euromonitor categories of milk formula include: standard milk formula, follow-on milk formula, and growing-up milk formula which correspond to infant formula, follow-up formula, and growing-up milks, respectively, which are the terms used throughout this report.

**Figure 2 Company shares of the US baby food market (2022)**



Source: Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.

The commercial baby food market constitutes two distinct markets: Breast-Milk Substitutes (BMS), which includes milk formula products<sup>f</sup>, and commercial complementary foods (CF), which includes different types of foods for older infants and young children.<sup>g</sup>

- Globally, the BMS market is worth approximately USD 53 billion (2022), while the BMS market in the US is worth approximately USD 5.4 billion (2022), showing an increase from approximately USD 4.7 billion in 2018. Formula for special medical purposes continues to

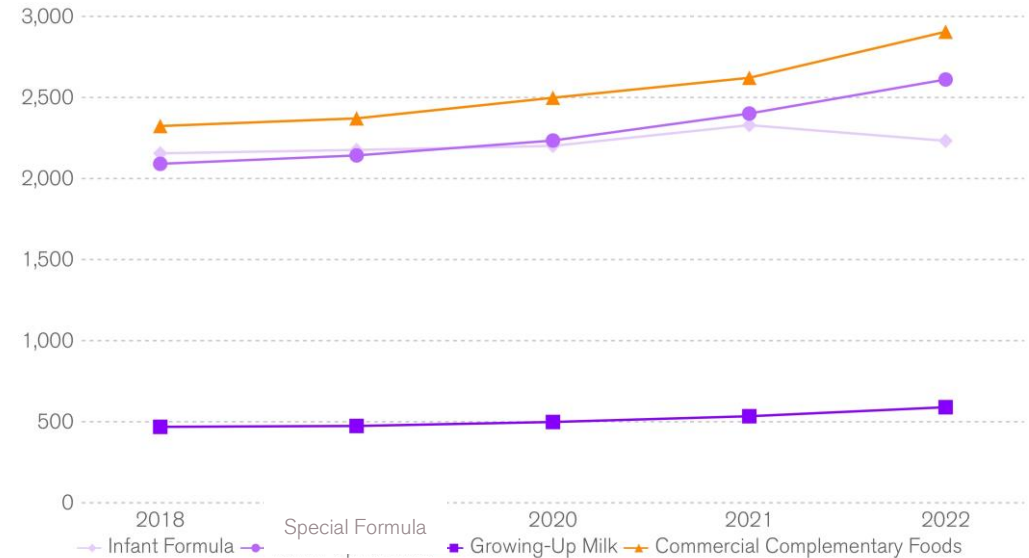
<sup>g</sup> Euromonitor categories of commercial complementary foods include: dried, prepared and other snack baby foods.



dominate the market, representing over 48% of the market, followed by standard milk formula (41%), and growing-up milk formula (almost 11%). Standard milk formula, growing-up milk formula and special baby milk formula (formula for special medical purposes) all show increase from 2018 to 2022, with standard milk formula increasing from approximately USD 2.15 billion to USD 2.23 billion, growing-up milk increasing from approximately USD 470 to USD 590 million, and special baby milk formula increasing from approximately USD 2 billion to USD 2.6 billion (as shown in Figure 3).

- Globally, the commercial CF market is worth over USD 18 billion (2022), while the CF market in the US is worth almost USD 3 billion (2022), an increase from around USD 2.3 billion (2018), and resulting in an increasing share of the baby food market (33 to 34.8%). Dried baby food shows an increase from approximately USD 127 to 144 million, prepared baby food from approximately USD 1.9 to 2.4 billion, and other baby food from approximately USD 291 to USD 349 million over the same time period (as shown in Figure 3).

**Figure 3: Trends in baby food product sales in the United States (USD million)**



Source: Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.

Note: no information was available on follow-up formula. Special formula refers to formulas for special medical purposes.



## **US laws and regulations regulating the marketing of foods for infant and young children**

According to a 2022 Status Report by the WHO, UNICEF and International Baby Foods Action Network, the US has 'no legal measures' in regards to national implementation of the Code<sup>28</sup>. There are currently no self-regulatory frameworks to cover marketing of breast-milk substitutes or commercial complementary foods in the US, and many marketing techniques that are in contravention of the Code are common practices in the country<sup>29</sup>.

In the US, in recent years there have been some efforts to implement recommended practices set out in the Code. In 2016, the Food and Drug Administration (FDA) issued draft guidance for public comment, which recommended that infant formula manufacturers substantiate labelling claims regarding effects on the structure and function of the body (such as brain development and gastrointestinal functions), however, to date no final recommendations have been issued<sup>30</sup>.



## 3. Methodology

### Country assessments in ATNI's BMS and CF Marketing Indexes

ATNI's BMS and CF Marketing Indexes 2024 collectively assessed the 20 largest baby food companies globally, based on 2021 retail sales estimates. ATNI estimates these companies hold >70% of the global baby food market share of breast-milk substitutes and commercial complementary foods<sup>31</sup>.

Both the BMS and CF Marketing Indexes consist of two main types of assessment:

- the **Corporate Profile** assessment which examines global corporate policies and procedures
- the **Country Studies** assessment which measures companies' marketing practices in selected countries

The Corporate Profile and Country Studies evaluate the extent to which company policies and practices align with the various provisions of the Code. It is worth noting that while the Corporate Profile assesses company policies and commitments on all aspects of the Code, the Country Studies assess marketing practices against specific provisions of the Code.

The [methodology](#) for the BMS and CF Marketing Indexes 2024 includes additional information about the companies selected and the respective Index(es) they are assessed in, as well as the basis and nature of the assessments for each component and how they feed into the overall Indexes. For further details specifically on the Country Studies, refer to the section on 'In-country assessments' on pages 19-26 of the methodology. Annex I and Annex II of the methodology include a list of all the indicators against which companies are assessed on for the Corporate Profile of the BMS Marketing

Index and CF Marketing Index, respectively. Indicators with this symbol are those that are also used in the Country Studies to assess companies' practices against the specific Code requirement. More details on which Code requirements are assessed, and how, are explained in the section in this report on [Assessment methods and scoring](#).

ATNI's assessments are based on the standards of the Code and its definitions, the following products are assessed in each of the respective Indexes:

- The **BMS Marketing Index** assesses company standards on the marketing of breast-milk substitutes, hereinafter referred to as BMS products. These include any milks (or products that could be used to replace milk, such as fortified soya milk alternatives), in either liquid or powdered form, that are specifically marketed for feeding older infants and young children up to the age of three years; namely:
  - **IF:** infant formula (intended for infants younger than six months of age)
  - **FUF:** follow-up formula (intended for older infants between six months up to one year of age)
  - **GUM:** growing-up milks or toddler milks (intended for young children between one to three years of age)

It is important to note that the Code never made exceptions to formulas for special medical purposes therefore these products are also included within the scope of ATNI's studies. Bottles and teats, however, are not included in ATNI's assessments as these products generally would not be manufactured by food and beverage companies.

- The **CF Marketing Index** assesses the marketing of commercial complementary foods, hereinafter referred to as CF products. These include baby porridge and cereals, dairy/fruit/vegetable-based baby





purées, savory meals and snack foods, as well as baby teas, juices and water for infants and young children between six up to 36 months of age.

CF products marketed to infants aged under six months are considered unwanted breast-milk substitutes, as these products interfere with exclusive breastfeeding in the first six months. However, ATNI will assess these products in the CF Marketing Index rather than the BMS Marketing Index to emphasize that CF products are intended for older infants and young children aged from 6 to 36 months and not be introduced to infants aged under six months who should be exclusively breastfed.

The BMS Marketing and CF Marketing Indexes 2024 can be found here for the [BMS Marketing Index 2024](#) and the [CF Marketing Index 2024](#). Individual company scorecards are also available where company performance is compared across the selected markets.

## Country selection: the United States

As part of the Country Studies component of the BMS Marketing and the CF Marketing Indexes 2024, five countries in total were selected for assessment. This report focuses on the findings from the US. Similar [in-country reports](#) are published for the other four countries selected: China, Germany, Indonesia and Viet Nam.

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<sup>h</sup> The five countries in which ATNI conducted assessments of marketing practices for the BMS and CF Marketing Indexes 2024 are: China, Germany, Indonesia, United States, and Viet Nam.

As the company scope has expanded for the BMS and CF Marketing Indexes 2024 (from nine companies assessed in 2021 to 20 companies for this assessment), the geographic variability of the companies' markets warranted the selection of a minimum of five countries, to ensure each of the 20 companies is assessed on BMS/CF marketing in at least one country. The US was one of the five countries<sup>h</sup> selected for assessment for several reasons, all of which are linked to the country selection criteria as described on page 20 of the [methodology](#). One of the 20 companies selected, Hain Celestial, only sells baby food in the US. The US is one of the largest baby food markets (i.e. for BMS products) for two other companies, Abbott and Reckitt. Additionally, Danone, Hero, Lactalis, and Nestlé also sell baby foods in the US. Collectively, the seven companies constitute around 80% of the US' baby food market (based on 2022 Euromonitor International retail sales estimates)<sup>i</sup>.

Three of them – Danone, Hain Celestial and Nestlé<sup>j</sup>, sell BMS and CF products in the US. Hero and Lactalis however only sell CF products in the US. This report presents the companies' findings on the marketing practices findings of BMS products and CF products separately.

## Assessment methods and scoring

The methodology for the in-country assessments is guided by the second edition of the NetCode protocol for periodic assessment, published in 2017.<sup>32</sup> ATNI has adapted the scope to ensure that relevant elements of the guidance supported by WHA resolution 69.9 are incorporated.

<sup>i</sup> Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.

<sup>j</sup> Nestlé divested from its Good Start infant formula brand in the U.S., which was sold to Perrigo late 2022.



The main areas of marketing assessed in the country studies for the BMS and CF Marketing Indexes 2024 are online points-of-sale, traditional and online media outlets, and product labels. Data collection is conducted using forms adapted from the 2017 edition of the NetCode toolkit, namely:

- Form 5: List of relevant products sold at point-of-sale
- Form 6: Promotions at retail outlets and pharmacies
- Form 7: Desk review of labels
- Form 8: Desk review of promotions on the media

The aim is to assess compliance with the Code. This is not an assessment against local regulations.

In addition, due to the increased number of companies and countries assessed compared to the previous ATNI country studies, data collection methods were adapted by using online tools to capture marketing practices.

The three main forms of assessment are described below:

## I. Social listening<sup>k</sup>

**Purpose of the assessment:** Monitor companies' online marketing activities to determine level of compliance with Article 5 of the Code and the guidance supported by WHA resolution 69.9 (see Box 1).

### Objectives:

1. Identify the number of company paid advertisements<sup>l</sup> of BMS/CF or related company sponsored content, if any.
2. Identify the number of promotions<sup>m</sup> on BMS/CF products, if any.

---

<sup>k</sup> Social listening involves monitoring the web and social media for mentions of defined key words or phrases, which can be gathered, organized, and analyzed.

<sup>l</sup> An advertisement can be any audiovisual material meant to promote relevant products.

### Box 1:

Article 5 of the Code includes provisions on advertising BMS to the general public, especially to caregivers. It stipulates that companies should not advertise or promote their BMS products on any form of media nor in retail environments (both physical and online). WHA 69.9 recommendations further prohibit companies that sell BMS from establishing contact with caregivers, providing them information on infant and young child feeding, and cross-promoting their BMS products in digital environments.

WHA 69.9 recommendations also include provisions on CF promotions. While these are not prohibited, certain requirements must be met to ensure the products are appropriately promoted. These specifically pertain to recommendation 4.

It is important to note that the Code recommends the introduction of CF products no earlier than six months of age to protect exclusive breastfeeding in this period. As those products should not be available on the market, they were counted as observations of non-compliance and not assessed on any further indicators that evaluate appropriate marketing practices.

Each identified advertisement and promotion of BMS is counted as an observation of non-compliance. Meanwhile, they are counted as such for CF if the advertisement or promotion is of a CF product intended for infants younger than six months of age (CF < 6), otherwise if it is of a CF product intended for older infants and young children between six months and three years of age (CF 6-36), the advertisement/promotion would be counted as an

<sup>m</sup> Promotions include any incentives for product purchase, such as discounts, offers, and giveaways, as well as information posts on infant and young child feeding, or they can be in the form of company contact via sign-up to baby clubs or contests.



observation of non-compliance if it does not meet recommendations 4 and 5 of WHA 69.9.

Each observed incidence of non-compliance is counted and used to calculate a company's country score.

**3.** Record additional incidences of non-compliance associated to an observed advertisement or promotion.

These are not counted towards the country score but provide context of the extent and nature of non-compliances. Examples include claims or solicited contact.

Note: Multiple forms of non-compliance may be attributed to a single BMS/CF product or brand advertisement or promotion; these would be considered collectively as a single incidence of a non-compliant observation. If the same advertisement is found on more than one social media platform, each instance would be counted as a separate observation of non-compliance.

**Methods:** Online platforms were monitored for mentions of a combined set of keywords across three main channels: web, social media and retail.<sup>n</sup>

The keywords, which are based on desk research in consideration of similar studies conducted, included:

- Names of the companies and BMS and CF brands assessed in a country, including the local company and brand names
- Wording related to infant and young child feeding, specifically breastfeeding, complementary feeding, baby formula, and commercial baby foods (e.g., baby formula, first milk, weaning food)
- Wording relating to promotions and claims (e.g., sale, discount, and immunity and comfort)

The service provider translated the keywords to the local language to ensure that local content was monitored and collected. In addition, ATNI worked closely with the service provider to revise and refine the list of keywords until relevant content was being delivered by the tool.

The platforms monitored were:

- Companies' local websites and social media channels
- Parenting websites: Up to 10 of the most popular websites and social media platforms (based on popularity and number of mentions), as captured by the social listening tool, that provide information to parents and caregivers on infant and young child feeding
- Retail websites: Up to five of the most popular local retail websites (based on popularity and number of mentions), as captured by the social listening tool, that sell BMS and CF products

See [Annex I](#) for a complete list of the websites and social media platforms monitored in the U.S which was developed based on initial scoping and desk research, as well as based on the platforms that the tool could monitor and collect relevant content from.

**Time frame:** monitoring spanned for eight weeks between May 12, 2023 – July 6, 2023

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<sup>n</sup> ATNI contracted Digimind to conduct the social listening and collect relevant mentions.



## II. Traditional media monitoring

**Purpose of the assessment:** monitor companies' marketing activities on traditional media to determine level of compliance with Article 5 of the Code and the guidance supported by WHA resolution 69.9 (see Box 1 above).

### Objectives:

1. Identify the number of company paid advertisements<sup>o</sup> of BMS/CF or related company sponsored content, if any.

Each identified advertisement of BMS is counted as an observation of non-compliance. For CF, advertisements of CF < 6 are counted as an observation of non-compliance, as well as advertisements of CF 6-36 products that do not meet recommendations 4 and 5 of WHA 69.9.

Each observed incidence of non-compliance is counted and used to calculate a company's country score.

2. Record additional incidences of non-compliance associated with an observed advertisement.

These are not counted towards the country score, but provide context of the extent and nature of non-compliances. Examples include promotions, claims, or solicited contact.

Note: Multiple forms of non-compliance may be attributed to a single BMS/CF product or brand advertisement; these would be considered collectively as a single incidence of a non-compliant observation. If the same advertisement is

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<sup>o</sup> An advertisement can be any audiovisual material meant to promote relevant products.

<sup>p</sup> ATNI contracted Nielsen Ad Intel International to monitor traditional media channels and collect relevant creative advertisements.

found on more than one channel, each instance would be counted as a separate observation of non-compliance.

**Methods:** creatives by advertisers of the companies assessed were monitored<sup>p</sup> on television channels for content related to BMS and CF products and brands<sup>q</sup>.

A total of 448 government, private, and cable channels were monitored in the US. In the US, newspapers and radio were not monitored by Nielsen Ad Intel International.

See [Annex II](#) for a complete list of the broadcast channels monitored in the US.

The sources monitored have a reach of > 70% of the population in the country.

**Time frame:** Monitoring spanned a total of six months, between January 1 2023 and June 30 2023. Across all channels, live monitoring took place between May 4 2023 and June 30 2023 (two months), while historical content was obtained for the period between January 1 2023 and May 3 2023. The monitoring was continuous and not limited to a specific time interval during the day.

## III. Review of product labels:

**Purpose of the assessment:** evaluate companies' product labels to determine their level of compliance with Article 9 of the Code and guidance supported by WHA resolution 69.9 (see Box 2).

<sup>q</sup> Radio and print were not covered by Nielsen Ad Intel International in the US, therefore, only tv channels were monitored.



**Box 2:**

Article 9 of the Code includes provisions on labelling requirements for BMS which are further augmented by recommendation 4 of WHA 69.9. Labelling requirements for CF products are specified in recommendation 4 of WHA 69.9.

Labels of CF < 6 products are counted as observations of non-compliance as those products should not be available on the market, thus they were not assessed on any further indicators that evaluate appropriate marketing practices.

**Objectives:**

- 1. Identify the number of non-compliant product labels, if any.

Each identified non-compliant label is counted as an observation of non-compliance, contributing to the country score.

- 2. Record additional non-compliances associated to an observation.

A non-compliant label may have more than one type of non-compliance. The various non-compliances identified per label are not added up to the country score, but provide context of the extent and nature of non-compliances. Examples include inappropriate use of pictures and images, claims, or missing instructions of appropriate preparation.

<sup>r</sup> ATNI contracted Innova Market Insights to access the product database and obtain information on BMS and CF products in the markets of interest.

**Methods:** BMS and CF product information was obtained from a third-party product database<sup>r</sup> that also included images of the product labels.

**Time frame:** Products selected for the assessment included those launched between March 2020 and February 2023. The aim was to include BMS and CF products that were on the markets assessed in the first half of 2023.

For each company, the sum of all incidences of non-compliance with the Code identified from the social listening, traditional media monitoring, and product label review corresponds to a country score that feeds into the Index score (see Table 1 below). In this study, the higher the number of observed incidences of non-compliance for a company, the less compliant it is to the Code, whereas a company would be considered fully compliant with the Code if no incidences of non-compliance are found across online and traditional media and for product labels.

**Table 1 Company country scores based on observed incidences of non-compliance with the Code**

| Observed incidences of non-compliance with the Code in a country | BMS or CF country score |
|--|-------------------------|
| 0  | 100%                    |
| 1-10   | 66%                     |
| 11-20  | 33%                     |
| > 20   | 0%                      |



## Data verification for US

Once data collection was completed, ATNI informed all 20 companies separately about the assessments and the countries they took place in, the US being one of them. As part of ATNI's fact-checking process, each company was requested to confirm if the brands captured correctly represent the markets studied during the research timeframe. As the verification process entails fact-checks and requests for additional information, it has no influence on the assessments and findings.

For the label assessment, companies were specifically requested in some cases to share additional product information and materials that could not be found in the public domain if images of the product packages were missing or when the images available to ATNI were not clear enough to extract the information needed to complete the assessments.

In regard to the online findings, companies were asked to confirm whether they had contractual relationships with parenting websites (targeting parents/caregivers of infants and young children) in situations where company-related incidences of non-compliance were found, and with online retailers where point-of-sale promotions were monitored. As this is an assessment of company practices, ATNI verifies if companies have any agreements with parenting websites and online retailers or influence on their marketing practices, to determine whether the companies are responsible in any way for the findings and thus if they should be attributed to the company or excluded from the assessments.

If companies did not respond to ATNI's requests, all identified incidences of non-compliance were included in the assessments, and where clear images were missing, the label assessments remained incomplete and are noted as such. See Table 2, below, for information on the companies' level of engagement in relation to the US findings.

During this process, companies can review their findings, along with the evidence of all observed incidences of non-compliance in the form of images and screenshots, videos, and links. ATNI follows an independent and transparent approach with the companies to confirm to them ATNI's observations of non-compliance and where they were identified. These details also serve to provide the companies with the information they need to take corrective action.



**Table 2. Level of company engagement on the US findings**

| Company        | If company engaged with ATNI on country findings | Changes to label findings |   |  | Changes to online findings              |   |  |
|----------------|--|---------------------------|---|--|---|---|--|
|                |  | Excluded products         | Reason for exclusion                      | Additional requested material provided | Excluded findings from online retailers | Excluded findings from parenting websites | Reason for exclusion   |
| Abbott         | Yes  | 0                         | -   | Yes, for BMS                           | 0                                       | 1 BMS                                     | No contractual relationship  |
| Danone         | Yes  | 4                         | 4 CF products discontinued                | Yes, for BMS and CF                    | Not applicable for BMS<br>2 CF          | Not applicable for BMS and CF             | CF products were out of scope of this assessment (intended for children over 3 years of age) |
| Hain Celestial | No   |                           |   |  |   |   |  |
| Hero           | No   |                           |   |  |   |   |  |
| Lactalis       | No   |                           |   |  |   |   |  |
| Nestlé         | Yes  | 14                        | 8 BMS products divested<br>6 BMS delisted | Yes, but incomplete for BMS and CF     | Not applicable for BMS<br>0 CF          | Not applicable for BMS<br>0 CF            | -  |
| Reckitt        | No*  |                           |   |  |   |   |  |

\* Reckitt did not respond to ATNI during the verification phase and communicated with ATNI at a later stage when the assessments were being finalized, at which point ATNI could not consider the company's feedback.

Note: "Not applicable" indicates there was no observation of this company's BMS/CF products on the retailer or parenting websites monitored.



## 4. Marketing practices in the US for BMS

The findings on the extent to which five selected companies market their BMS products in the US in line with the Code are presented in Table 3. **A total of 123 incidences of non-compliant marketing practices for BMS products were found during the research period.** As seen in Table 3, non-compliant marketing practices were found for all five companies. In total, 45 (37%) of the total incidences of non-compliances found in this study were attributed to

BMS-related promotions on online retail or online media channels. Seventy-six (62%) of the total incidences of non-compliance found in this study were attributed to products with non-compliant labels with all labels assessed from the five companies having at least one incidence of non-compliance with the Code. However, no promotions were found for Hain Celestial on online or in traditional media during the research period – which could be related to a number of factors considering the companies' relatively lower market shares in the US but also possible limitations in the extent of products, brands, and channels assessed. [Annex III](#) provides an overview of the brands captured for each company during the monitoring and across the different marketing channels.

**Table 3: Number of non-compliant marketing practices for BMS products by company and by marketing channel in the US**

| Company<br>(Estimated BMS market share in the US <sup>§</sup> ) | Example of brands assessed             | TOTAL number of incidences of non-compliance (n) | Promotions                            |           |           |  |          |          |          | Non-compliant labels out of number of product labels assessed<br>(Of products launched between March 2020 and February 2023) |
|---|--|--|---------------------------------------|-----------|-----------|--|----------|----------|----------|--|
|   |  |  | Online<br>(May 12 2023 – July 6 2023) |           |           | Traditional<br>(January 1 2023 – June 30 2023) |          |          |          |  |
|   |  |  | Retail                                | Media     | Total     | TV   | Radio    | Print    | Total    |  |
| <b>Abbott (43%)</b>   | PediaSure, Similac                     | 50   | 2                                     | 12        | 14        | 0  | 0        | 0        | 0        | 36/36  |
| <b>Danone (&lt;5%)</b>  | Aptamil, Happy Baby, Nutricia, Organic | 11   | 0                                     | 7         | 7         | 0  | 0        | 0        | 0        | 4/4  |
| <b>Hain Celestial (&lt;5%)</b>                                  | Earth's Best                           | 5  | 0                                     | 0         | 0         | 0  | 0        | 0        | 0        | 5/5  |
| <b>Nestlé (&lt;5%)</b>  | Alfamino, Gerber Good Start, Nido      | 17   | 0                                     | 10        | 10        | 2  | 0        | 0        | 0        | 5/5  |
| <b>Reckitt (38%)</b>  | Enfagrow, Enfamil                      | 40   | 5                                     | 9         | 14        | 0  | 0        | 0        | 0        | 26/26  |
| <b>TOTAL</b>  |  | <b>123</b>                                       | <b>7</b>                              | <b>38</b> | <b>45</b> | <b>2</b>                                       | <b>0</b> | <b>0</b> | <b>2</b> | <b>76/76</b>   |

<sup>§</sup> Euromonitor International Limited, Dairy Products and Alternatives Edition, 2021 data, © All rights reserved.





## Online retailers

There were seven point-of-sale promotions found on the websites of the five most popular online retailers in the US. Five were for Reckitt products and two for Abbott products, both companies having the biggest shares in the US BMS market. No online retail promotions were found for products from Danone, Hain Celestial or Nestlé, all of which have low shares in the US BMS market, in the eight-week period the channels were monitored.

All five Reckitt product promotions and one product promotion from Abbott had an indicated age range of 0-12 months, which classifies them as infant formula. The other BMS product promotion found from Abbott had no indicated age range. All seven findings contained at least one form nutrition, health or marketing claim<sup>†</sup>.

## Online media

For four companies, Abbott, Danone, Nestlé, and Reckitt, a total of 38 advertisements and promotions related to BMS brands were found on online media channels during the research period. No advertisements or promotions were found for Hain Celestial BMS products in the eight-week period the channels were monitored.

All of the BMS advertisements and promotions found on online media channels appeared on local company or brand associated social media pages. For Abbott and Nestlé, promotions were found on Facebook (7 and 5 respectively). For Danone, Nestlé, and Reckitt promotions were found on Instagram (4, 5 and 9 respectively). Danone also promoted through Twitter and YouTube, and Abbott through their US website.

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<sup>†</sup> In this study, ATNI referred to WHO Europe's Nutrient and Promotion Profile Model for the definition of the different types of claims.

Along with the advertisements identified, which are non-compliances with Article 5.1 of the Code, additional non-compliances were observed pertaining to Article 5 of the Code and recommendations 5 and 6 of the guidance supported by WHA resolution 69.9. Examples include offers of gifts or giveaways, company contact through solicited sign-ups to mobile apps, and information on infant and young child feeding being provided by the companies to caregivers. In addition, 21 out of the 38 advertisements (55%) contained a nutrition, health or marketing claim, such as “life-transforming nutrition”, or “...as sweet as mama's love”.

About 61% of the online adverts had no specific age indicated for the BMS product promoted. In total, 34% of online adverts were not related to specific BMS products, but rather advertised brands associated with products within the scope of the study.

## Traditional media

During the research period, two BMS advertisements from Nestlé were found on television in the US, a non-compliance with Article 5 of the Code. Both advertisements concerned growing-up milk products. Both advertisements included a nutritional, health and marketing claim, such as “the vitamins and nutrients help a healthy growth and development”.

No findings were reported on television channels for Abbott, Danone, Hain Celestial, and Reckitt during the six-month period the channels were monitored.



## BMS product labels

Of the 76 BMS labels assessed for the five companies, **all 76 labels** contained one or more instances of non-compliance, with an average of six non-compliances per label<sup>4</sup>. Hain Celestial had the highest average number of incidences of non-compliance per label with three of the five product labels assessed having 13 observations of non-compliance each.

All of the labels contained one or several claims: nutritional claims (76 out of 76 labels), health claims (72 out of 76 labels), and/or marketing claims (66 out of 76 labels), for example “support brain and eye development” (a health claim) or “number 1 pediatrician recommended formula brand.” (a marketing claim)”.

Furthermore, 72 out of 76 labels did not include a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond, as per recommendation 4 of the WHO Guidance on the inappropriate promotion of foods for infants and young children supported by WHA resolution 69.9. For the remaining four labels, two products did not have clear images and therefore it could not be confirmed if the labels included this statement or not. The two other products were by Abbott for the Singapore market that were also being sold by the company in the US. Both products intended for the Singapore market included the statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond.

Of all labels, 53% (40 out of 76 labels) did not contain a statement that the product should be used only on the advice of a health worker, in a font size that is easily visible, in bold and on a contrasting background, as required by

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<sup>4</sup> It should be noted there were in total 6 products with missing images, so for these products it was not possible to do the full assessment.

Article 9.2 of the Code. 47% (36 out of 76 labels) contained text that compared the product to breastmilk; e.g. “closest formula to breastmilk” and “new and improved formula that is now closer than ever to breast milk”.

The majority of the BMS labels assessed for the US were from infant formula for ages 0-12 months (85%). See Table 4 for an overview of the number of product labels assessed per company and the respective non-compliances, including the most frequently identified ones. A full list on BMS product label results can be found in [Annex IV](#).



**Table 4. Overview of product label assessment**

|                       | Number of (n)     |                              |                      | Average number of non-compliances per non-compliant label (n) | Most common non-compliances on product labels |  |  |   |
|-----------------------|-------------------|------------------------------|----------------------|---|---|--|--|---|
|                       | Products assessed | Products with missing images | Non-compliant labels |   | Contain claims                                | No statement on the importance of breastfeeding in line with WHO recommendations | No clear statement on the use of BMS on the advice of health workers | Contain text or images that may discourage or undermine breastfeeding or makes a comparison to breastmilk |
| <b>Abbott</b>         | 36                | 0                            | 36                   | 6   | 36  | 34   | 31   | 19  |
| <b>Danone</b>         | 4                 | 0                            | 4                    | 6   | 4   | 4  | 1  | 4   |
| <b>Hain Celestial</b> | 5                 | 2                            | 5                    | 10  | 5   | 5  | 1  | 2   |
| <b>Nestlé</b>         | 5                 | 2                            | 5                    | 3   | 5   | 3  | 0  | 1   |
| <b>Reckitt</b>        | 26                | 2                            | 26                   | 6   | 26  | 26   | 7  | 10  |
| <b>TOTAL</b>          | <b>76</b>         | <b>6</b>                     | <b>76</b>            |   | <b>76</b>                                     | <b>72</b>  | <b>40</b>  | <b>36</b>   |

Note: Shaded values in red indicate images were missing or unclear to complete the assessment on the respective indicators



## 5. Marketing practices in the US for CF

None of the marketing practices observed are fully compliant with the Code. The findings on the extent to which five companies (Danone, Hain Celestial, Hero, Lactalis and Nestlé) market their complementary food (CF) products in the US in line with the Code are presented in Table 5. A total of **189**

**incidences of non-compliant marketing practices for CF products** were found during the research period, of which 73 were from online media, two from television and 114 found on all the product labels assessed for these companies.

[Annex V](#) provides an overview of the brands captured for each company during the monitoring and across the different marketing channels.

**Table 5: Number of non-compliant marketing practices for CF products by company and by marketing channel**

| Company<br>(Estimated CF market share in the US <sup>v</sup> ) | Example of brands assessed | TOTAL number of incidences of non-compliance (n) | Promotions                            |              |              |  |          |          |            | Non-compliant labels out of number of product labels assessed (Of products launched between March 2020 and February 2023) |
|--|----------------------------|--|---------------------------------------|--------------|--------------|--|----------|----------|------------|---|
|  |                            |  | Online<br>(May 12 2023 – July 6 2023) |              |              | Traditional<br>(January 1 2023 – June 30 2023) |          |          |            |   |
|  |                            |  | Retail                                | Media        | Total        | TV   | Radio    | Print    | Total      |   |
| <b>Danone (&lt;5%)</b>   | Happy Baby, Happy Tot      | 17/17  | 0                                     | 2/2          | 2/2          | 0  | 0        | 0        | 0          | 15/15   |
| <b>Hain Celestial (10%)</b>                                    | Earth's Best               | 13/13  | 0                                     | 5/5          | 5/5          | 0  | 0        | 0        | 0          | 8/8   |
| <b>Hero (6%)</b>   | Baby gourmet, Beech-Nut    | 30/30  | 0                                     | 15/15        | 15/15        | 0  | 0        | 0        | 0          | 15/15   |
| <b>Lactalis (&lt;5%)</b>                                       | Stonyfield                 | 11/11  | 0                                     | 9/9          | 9/9          | 0  | 0        | 0        | 0          | 2/2   |
| <b>Nestlé (38%)</b>  | Gerber, Cerelac            | 118/118  | 5/5                                   | 37/37        | 42/42        | 2/2  | 0        | 0        | 2/2        | 74/74   |
| <b>TOTAL</b>   |                            | <b>189/189</b>                                   | <b>5/5</b>                            | <b>68/68</b> | <b>73/73</b> | <b>2/2</b>                                     | <b>0</b> | <b>0</b> | <b>2/2</b> | <b>114/114</b>  |

<sup>v</sup> Euromonitor International Limited, Dairy Products and Alternatives Edition, 2021 data, © All rights reserved.



## Online retail

During the research period, a total of five point-of-sale promotions (product discounts) were found for products from Nestlé on the websites of the five most popular online retailers in the US. For three of these products, no clear recommended age was specified, only milestones such as “crawler” or “sitter”.

All of the promotions contained at least one type of claim: a health claim, a nutrition claim and/or a marketing claim. Further, none included a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond. These non-compliances all link to what is specified under recommendation 4 of the guidance supported by WHA resolution 69.9.

No observations of CF point-of-sale promotions were found for Danone, Hain Celestial, Hero or Lactalis, in the eight-week period the retail channels were monitored.

## Online media

A total of 68 non-compliant advertisements or promotions were found on online media channels: two from Danone, five from Hain Celestial, 15 from Hero, nine from Lactalis and 37 from Nestlé. These appeared on company or brand associated social media pages on Instagram (40), Facebook (23), and YouTube (2). Two adverts of CF products from Nestlé were found on a parenting site.

None of the advertisements had a clear age specified for the CF product and in 17 cases it concerned brand promotions. All of the advertisements assessed contained two to five incidences of non-compliance each. The company advertisements included incidences of non-compliance with recommendations 5 and 6 of the guidance supported by WHA resolution 69.9 by allowing company contact through solicited sign-ups to contests, and by

sharing information on infant and young child feeding. The five companies also market BMS products, thus posing an unwanted risk of cross-promotion and conflicts of interest.

From all the advertisements assessed, around 60% contained a nutrition, health or marketing claim. The most used were marketing claims with examples such as “tasty snack”, “easy snack for your little one”, among others. Further, none of the CF advertisements assessed included a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond, as per recommendation 4 of the guidance supported by WHA resolution 69.9.

## Traditional media

During the research period, two CF television advertisements from Nestlé were found in the US. The advertisements did not clearly specify the recommended age of introduction. Both ads contained a claim (nutritional, health and/or marketing claim). Furthermore, the ads included a baby of unknown age suggesting the use for infants under the age of six months. Both ads did not include a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond. These non-compliances all link to what is specified under recommendation 4 of the guidance supported by WHA resolution 69.9.

No observations of CF advertisements were found on the television channels for Danone, Hain Celestial, Hero or Lactalis during the time of the research.

## Commercial CF product labels

All 114 product labels assessed from the five companies were found to be non-compliant.



One CF product from Hain Celestial and two products from Hero were found to be marketed as suitable for infants under six months of age, indicating it is suitable from four months of age. As this product should not be available on the market, these were counted as a non-compliant label but not assessed on any further indicators that evaluate appropriate labeling practices. For the remaining labels assessed, all 111 labels contained one or more instances of non-compliance, with an average of four observed incidences of non-compliance per label<sup>w</sup>. Of these labels, 38 products did not contain a clear statement on the age of introduction, therefore they could not be classified as CF intended for infants below or above six months of age. The remaining 73 products were aimed at older infants aged six months and older.

Almost all labels assessed contained at least one claim, except for one product from Nestlé. 110 labels had nutritional claims, 105 contained marketing claims and 58 contained health claims, such as “to help support brain development”.

None of the labels assessed included a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond as per recommendation 4 of the guidance supported by WHA resolution 69.9.

Other incidences of non-compliance against recommendation 4 were identified for 49 out of the 111 assessed labels which contained text, image or other elements that undermine or discourage appropriate complementary feeding or that may suggest that the product is inherently superior to home prepared foods<sup>x</sup> e.g. “Big nutrition to help make every bite count. One serving of nutrient dense superfoods per pouch”. Furthermore, four of the CF products

assessed included an image or logo with a baby that might suggest it is suitable for infants under the age of six months.

See Table 6 for an overview of the number of product labels assessed per company and the respective non-compliances, including the most frequently identified ones. A full list of CF product label results can be found in [Annex VI](#).

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<sup>w</sup> It should be noted that there were in total three products with missing images (one from Hain Celestial, Hero, and Nestlé each), so for these products it was not possible to do the full assessment.

<sup>x</sup> One product had missing images, resulting in an incomplete assessment.



**Table 6 Overview of product label assessment**

|                       | Number of (n)     |  |                      | Average number of non-compliances per non-compliant label (n) | Most common non-compliances on product labels |  |   |  |
|-----------------------|-------------------|--|----------------------|---|---|--|---|--|
|                       | Products assessed | Products for which clear images were not available | Non-compliant labels |   | Contain claims                                | No statement on the importance of breastfeeding in line with WHO recommendations | No clear statement on the age of introduction | Contains any text, image or other element that may undermine appropriate complementary feeding |
| <b>Danone</b>         | 15                | 0  | 15                   | 4   | 15  | 15   | 10  | 7  |
| <b>Hain Celestial</b> | 8                 | 1  | 8*                   | 3   | 7   | 7  | 2   | 2  |
| <b>Hero</b>           | 15                | 1  | 15**                 | 3   | 13  | 13   | 2   | 5  |
| <b>Lactalis</b>       | 2                 | 0  | 2                    | 5   | 2   | 2  | 0   | 1  |
| <b>Nestlé</b>         | 74                | 1  | 74                   | 4   | 73  | 74   | 24  | 34   |
| <b>TOTAL</b>          | <b>114</b>        | <b>3</b>   | <b>114</b>           |   | <b>110</b>                                    | <b>111</b>   | <b>38</b>                                     | <b>49</b>  |

\* Of the eight non-compliant CF labels, one belongs to a product intended for infants under six months.

\*\* Of the 15 non-compliant CF labels, two belong to a product intended for infants under six months.

Note: Shaded values in red indicate images were missing or unclear to complete the assessment on the respective indicators.



## 6. Conclusions and recommendations

This study was guided by the NetCode protocol with the Code as a benchmark. Although the number of incidences of non-compliance varied between the companies, **none of the seven companies assessed in the US during the research period between January 2023 to July 2023 market their BMS and CF products fully in line with the Code.** All the labels assessed for BMS (76 products) and CF (114) contained several non-compliances each. A total of 47 BMS product promotions and 75 CF product promotions were observed on online or traditional media during the time of research, all advertisements assessed contained one or more incidences non-compliances, mostly claims.

There was **a total of 123 incidences of non-compliant marketing practices found for BMS products during the research period.** Most of these incidences were from BMS products from Abbott (50) and Reckitt (40). These two companies also have the biggest market share (each around 40%) for BMS products in the US of the five companies with BMS products in this study.

A total of **189 incidences of non-compliant marketing practices for CF products** were found during the research period. The majority of the incidences of non-compliant marketing practices were found for Nestlé CF products, which accounted for 62% (118 of the 189 incidences). Nestlé has the biggest market share for CF products in the US (around 40%) from the companies selling CF in this study.

For the BMS products, the majority of the observed incidences of non-compliance were related to infant formula for infants from birth (74 out of 123). For the CF products, most of the observed incidences of non-compliance concerned product brands or products for older infants and young children above six months of age. However, there were three CF products marketed as suitable for under six months during the time of research, while these products should not be available on the market as per the Code. Further, many of the CF product labels had no clear recommended age of introduction.

In the US there are currently no legal measures on national implementation of the Code, nor any self-regulatory frameworks to cover marketing of BMS or CF products. This could partially explain the high number of incidences of non-compliant marketing practices found for BMS and CF products in the US during the time of the research. In 2016, the FDA has issued a draft guidance which recommended that infant formula manufacturers substantiate labelling claims regarding effects on the structure and function of the body (such as brain development and gastrointestinal functions), however to date no final recommendations have been issued, and observations in this research found that these type of claims are still being made by some companies. According to the Code, nutrition, health, and marketing claims are not permitted for foods for infants and young children, except where specifically provided for in relevant Codex Alimentarius standards or national legislation.

ATNI recommends that companies strengthen their marketing policies and ensure their marketing practices comply fully with the recommendations of the Code and all subsequent relevant resolutions, including the guidance supported by WHA resolution 69.9. ATNI has developed a [model company policy](#) on the responsible marketing of breast-milk substitutes which can guide companies on how to incorporate Code provisions and align with the latest public health requirements in practice.





## Recommendations to companies

### Online media and traditional media channels

ATNI urges companies selling products within the scope of the Code to take responsibility for monitoring their marketing practices beyond local regulations, according to the principles and the aim of the Code and subsequent relevant resolutions, and to take steps to ensure this includes online media channels as well as traditional media channels. Given the extent of online media findings in this study, it is clear that companies need to set stronger standards and create procedures and control mechanisms for responsibly marketing their products in digital environments that are in line with the latest guidance by the World Health Organization on restricting digital marketing of foods for infants and young children.<sup>33</sup>

### Promotion on online retailers' platforms

ATNI recognizes that not all promotions found within the selected online retail sites will have been initiated by, or agreed between, companies and retailers. Nevertheless, it is the responsibility of all market participants to monitor their marketing practices and take steps to ensure they conform to the Code. ATNI recognizes that companies must operate in compliance with anti-trust regulations which prevents, inter alia, any company influencing the pricing decisions of another. Within that context, companies are encouraged to look for ways to engage with their industry associations, retailers and/or regulators to ensure there are no promotions of BMS products in the retail environment, and see that CF products are appropriately promoted in line with the 2016 WHO Guidance on ending the inappropriate promotion of foods for infants and young children.

## Product labelling

The companies that reviewed the initial label assessments by ATNI all indicated that product labels are reviewed and approved by the local authority and compliant to the country regulations. However, according to WHA resolution 63.23, nutrition and health claims shall not be permitted for foods for infants and young children, except where specifically provided for in relevant Codex Alimentarius standards or national legislation; thus the labels were found to be non-compliant with the Code.

All companies are urged to adopt Code-aligned policies and practices so their products are labelled according to the Code as well as relevant elements of the guidance supported by WHA resolution 69.9. Based on this resolution, the scope of the Code has extended to growing-up milks, which companies should also cover in their policies and practices.

In addition, the WHA 69.9 guidance includes recommendations on which messages should be present on CF labels to support optimal infant and young child feeding and which are inappropriate and could undermine recommended practices. Companies should incorporate these recommendations in their policies and apply them to their CF products as most of the CF products in this assessment didn't fully meet these requirements.

## Recommendations to policy makers

As there are currently no legal measures on national implementation of the Code in place in the US, policy makers are encouraged to ensure these are developed. The findings presented in this study could be used to identify which areas need to be considered with most urgency.

ATNI also advises the US authorities and local stakeholders to implement regular monitoring of the marketing of BMS and CF marketed as suitable for



infants and young children up to three years of age, and to design control mechanisms to drive more compliance with local regulations and the Code. The results of this study indicate that monitoring and enforcement of advertising and promotion on all forms of media and the labelling of products should be strengthened.

Authorities are encouraged to ensure that distributors and retailers understand their obligations under local regulations and the Code, and that suitable penalties are in place to deter infraction of those obligations. Specifically, attention should be focused on price-related discounts or gifts, given the high number of such incentives that were found.

It is evident that digital marketing is now the primary means of promotion of BMS brands and products for national and multinational BMS companies, representing up to 70% of total advertising spend.<sup>34</sup> Based on the evolving digital marketing space, regulatory clarity and possibly amended or additional laws and regulations are needed to address newer digital strategies, such as: social media influencers, promoting and disseminating user-generated content, online social networks or “baby clubs”, professional advisory lines, and data harvesting for message targeting.<sup>35</sup>

### **Recommendations to civil society and NGOs**

Article 11.4 of the Code calls for non-governmental organizations (NGOs), professional groups, institutions and individuals, to draw the attention of manufacturers or distributors to activities that are incompatible with the principles and aim of the Code. Most of the companies assessed in this study for example have reporting channels which any member of the public can use to report on an observed non-compliance by a company, so that it can take any necessary action to rectify the non-compliant practice.

It is worth acknowledging that NGOs, civil society, and academia also have a critical role in continuously developing tools and means to address current

public health concerns. In light of the rise in digital marketing of BMS, an innovative tool was developed by Alive & Thrive and the FHI Solutions Innovation Incubator, called VIVID. This tool uses artificial intelligence to scan the internet for BMS Code violations, and it is hosted on the CATCH platform which acts as a virtual hub to disseminate, communicate, and connect the auto-detected findings. It is hoped this tool can be used by governments to support overall Code monitoring, enforcement, research, and adoption, or the strengthening of national legal measures to restrict inappropriate digital marketing.<sup>36</sup>



## 7. Study limitations

The increased number of selected companies and countries assessed for the BMS and CF Marketing Indexes 2024 warranted a modified approach to conducting the assessments for the Country Studies, considering the resources available to ATNI. ATNI undertook an [extensive consultation process](#) in which these changes were discussed. Despite the modifications, the methods are still guided by the NetCode protocol.

- The increased number of selected companies and countries assessed for the BMS and CF Marketing Indexes 2024, versus the resources available to ATNI, limited the capacity to assess and report on other companies which are not part of the BMS and CF Marketing Indexes 2024 but which sell BMS and CF products in the US (as done in previous BMS and CF Marketing assessments).
- Although commitments in the following areas are assessed to a certain extent within the Corporate Profile component of the BMS and CF Marketing Indexes 2024, ATNI recognizes the limitation in not capturing how companies' commitments are reflected in practice on these issues:
  - Articles 1-3 (the aim, scope, and definitions of the Code), including recommendations 1 and 2 of the guidance associated with WHA resolution 69.9, provide the context and structure for the in-country studies but are not monitored, per se.
  - While point-of-sale promotions were monitored online, they were not monitored in physical retail stores given limitations in conducting this form of on-the-ground assessment for the BMS and CF Marketing Indexes 2024.
- Due to a number of limitations, articles 6 and 7 of the Code and recommendation 6 of the guidance supported by WHA resolution 69.9, which address marketing within healthcare systems and to healthcare workers, were not within the scope of the in-country studies for the BMS and CF Marketing Indexes 2024.
- Article 10 of the Code requires special inspection of manufacturing processes, which is not covered by the NetCode protocol and, therefore, not within the scope of the on-the-ground assessments.
- Similarly, Article 11 of the Code primarily targets governmental responsibilities. However, the NetCode protocol did not address this and is therefore not within the scope of the in-country studies. Furthermore, corporate lobbying is not monitored as part of the on-the-ground studies; however, this topic may be explored in future iterations, as noted in ATNI's consultation report.
- While ATNI's methodology in this study is based on the Code, including all WHA resolutions up to WHA 71.9, it is worth acknowledging that the provisions of the Code can be further clarified and updated in future resolutions by the World Health Assembly and/or other relevant international guidance and guidelines published by the World Health Organization and UNICEF.
- It is possible that some non-compliances may not have been captured by the social listening method. Limitations may be attributed to the keywords used or website access restrictions, for example. Also, the social listening tool was only able to capture newly published content during the research period, therefore it is possible that not all non-compliances from the websites and social media platforms monitored were captured. In addition, there are possible limitations in the scope of the websites and social media platforms selected for monitoring,



depending on the sources the social listening tool was able to collect data from. Therefore, the channels monitored may not be representative of all local company/brand, retailer, and parenting websites and social media platforms.

- Due to the intricacies and various forms of contractual relationships that can exist between companies and online retailers or parenting websites, the extent to which these relationships could be confirmed was limited. ATNI had limited capacity and resources in this research to perform additional and thorough external validation checks.
- Some products did not have images for every side of the package, or images were blurry, which limited the completion of the label assessments for these products and it was not possible to confirm if certain requirements were met or not.
- The extent of products and brands assessed may not be an exhaustive list of the products and brands covered by each company's BMS/CF market in the US, despite ATNI's efforts to ensure so. Although assessing more products would likely mean an increase in the number of incidences of non-compliance found, this is not a limitation as Code-compliant labels were found in the other country studies.



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# Annex I List of websites and social media platforms monitored

| Type of Source                         | Company  |   |                       |                                     |              |  |             |
|--|--|---|-----------------------|-------------------------------------|--------------|--|-------------|
|  | Abbott   | Danone  | Hain Celestial        | Hero                                | Lactalis     | Nestlé                                     | Reckitt     |
| <b>Company / Brand website</b>         | Elecare<br>Pedialyte<br>Pediasure<br>Similac.com | Danone North America<br>Fortinius.com<br>Myketocal.com (nutricia)<br>Neocate.com<br>Nutricia-na.com<br>Us.aptil.com | Earthsbest.com        | usa.babygourmet.com                 |              | Gerber.com<br>goodnes.com/nido             | Enfamil.com |
| <b>Company/ Brand Facebook account</b> | Pedialyte<br>Pediasure<br>Similac                | AptamilUSA<br>FortiniUS<br>Neocate<br>NutriciaNorthAmerica<br>Happy Family<br>Organics                              | EarthsBest            | organicbabygourmet                  | stonyfield   | Alfaminousa<br>Gerber<br>NestleNIDOUUSA    | Enfamil     |
| <b>Company/brand Instagram</b>         | Pedialyte<br>Pediasure<br>Similac_us             | Aptamil_us<br>Neocateus<br>nutriciametabolics   | earthsbest            | Beechnutfoods<br>organicbabygourmet | stonyfield   | Alfaminousa<br>Gerber<br>nestlenidousa     | Enfamil     |
| <b>Company/brand pinterest account</b> |  |   |                       |                                     | stonyfield   |  |             |
| <b>Company Youtube account</b>         | Pediasure<br>Similac                             | Neocate US<br>NutriciaAMN   | EarthsBestOrg<br>anic |                                     |              | Gerber<br>Nido                             | Enfamil     |
| <b>Company Twitter account</b>         |  | Nutricia<br>Nutricia Neocate  | earthsbest            | babygourmet                         | Stonyfield O | GerberLife<br>Nestlé NIDO USA<br>Nestlé US | Enfamil     |



|                                   |  |  |  |  |   |  |  |
|-----------------------------------|--|--|--|--|---|--|--|
| <b>Parenting websites</b>         | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br>whattoexpect.com | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br>whattoexpect.com | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br>whattoexpect.com | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br>whattoexpect.com | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br><b>whattoexpect.com</b> | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br>whattoexpect.com | babycenter.com<br>happiestbaby.com<br>imamother.com<br>parents.com<br>scarymommy.com<br>whattoexpect.com |
| <b>Parenting Facebook account</b> | For the Mommas<br>Mom&apos;s Club<br>Mother&apos;s<br>Nutritional Center<br>Scary Mommy                  | For the Mommas<br>Mom&apos;s Club<br>Mother&apos;s<br>Nutritional Center<br>Scary Mommy                  | For the Mommas<br>Mom&apos;s<br>Club<br>Mother&apos;s<br>Nutritional<br>Center<br>Scary Mommy            | For the Mommas<br>Mom&apos;s<br>Club<br>Mother&apos;s<br>Nutritional<br>Center<br>Scary Mommy            | For the Mommas<br>Mom&apos;s Club<br>Mother&apos;s<br>Nutritional Center<br>Scary Mommy                         | For the Mommas<br>Mom&apos;s Club<br>Mother&apos;s<br>Nutritional Center<br>Scary Mommy                  | For the Mommas<br>Mom&apos;s Club<br>Mother&apos;s<br>Nutritional Center<br>Scary Mommy                  |
| <b>Parenting Twitter account</b>  | Alisson<br>community.whatto<br>expect.com<br>Happy Baby<br>Organics                                      | Alisson<br>community.whattoexp<br>ect.com<br>Happy Baby Organics   | Alisson<br>community.wa<br>ttoexpect.com<br>Happy Baby<br>Organics                                       | Alisson<br>community.whatt<br>oexpect.com<br>Happy Baby<br>Organics                                      | Alisson<br>community.whatto<br>expect.com<br>Happy Baby<br>Organics   | Alisson<br>community.whattoex<br>pect.com<br>Happy Baby<br>Organics                                      | Alisson<br>community.whattoex<br>pect.com<br>Happy Baby<br>Organics                                      |
| <b>Online retailer website</b>    | cvs.com <sup>25</sup><br><b>Samsclub.com</b><br><b>Target.com</b><br>Walgreens.com<br>Walmart.com        | cvs.com<br>Samsclub.com<br>Target.com<br>Walgreens.com<br>Walmart.com                                    | cvs.com<br>Samsclub.com<br>Target.com<br>Walgreens.com<br>Walmart.com                                    | cvs.com<br>Samsclub.com<br>Target.com<br>Walgreens.com<br>Walmart.com                                    | cvs.com<br><b>Samsclub.com</b><br><b>Target.com</b><br>Walgreens.com<br><b>Walmart.com</b>                      | cvs.com<br>Samsclub.com<br>Target.com<br>Walgreens.com<br>Walmart.com                                    | cvs.com<br><b>Samsclub.com</b><br><b>Target.com</b><br><b>Walgreens.com</b><br>Walmart.com               |

\* Highlighted are the platforms where the findings presented in this study were captured.

<sup>25</sup> Cvs.com was being captured but it was not possible to access its content due to restrictions from the website.





## Annex II List of broadcast channels monitored

The full list is presented in the following [excel file](#).

## Annex III BMS brands identified

| Company           | Brand        | Number of non-compliant product labels out of number of products assessed |     |     | Product/brand promotion found during online monitoring? | Product/brand promotion found during traditional media monitoring? |
|-------------------|--------------|---|-----|-----|---|--|
|                   |              | IF  | FUF | GUM |   |  |
| Abbott            | Similac      | 29/29   | 0/0 | 6/6 | Yes   | No   |
|                   | PediaSure    | N/A   | N/A | 1/1 | Yes   | No   |
| Danone            | Nutricia     | 0   | 0   | 0   | Yes   | No   |
|                   |              | 0   | 0   | 0   | Yes   | No   |
|                   | Aptamil      | 2/2   | N/A | N/A | No  | No   |
|                   | Happy Baby   | 1/1   | 1/1 | N/A | No  | No   |
| Hain<br>Celestial | Earth's best | 4/4   | 0/0 | 1/1 | No  | No   |
| Nestlé            | Gerber       | 5/5   | 0/0 | 0/0 | No  | No   |
|                   | Alfamino     | 0/0   | 0/0 | 0/0 | Yes   | No   |
|                   | NIDO         | 0/0   | 0/0 | 0/0 | Yes   | Yes  |
| Reckitt           | Enfa         | 21/21   | N/A | 3/3 | No  | No   |
|                   | Nutramigen   | 1/1   | N/A | N/A | No  | No   |

\* N/A indicates that this product type does not fall under the respective brand.



# Annex IV Performance on BMS product label Code requirements

The full assessment is presented in the following [excel file](#).



## Annex V Commercial CF brands identified

| Company        | Brand        | Number of non-compliant product labels out of number of products assessed |         |        | Product/brand promotion found during online monitoring? | Product/brand promotion found during traditional media monitoring? |
|----------------|--------------|---|---------|--------|---|--|
|                |              | CF <6   | CF 6-36 | No age |   |  |
| Danone         | Happy Baby   | 0/0   | 4/4     | 4/4    | No  | No   |
|                | Happy Tot    | 0/0   | 1/1     | 6/6    | No  | No   |
| Hain Celestial | Earth's best | 1/1   | 6/6     | 1/1    | Yes   | No   |
| Hero           | Baby gourmet | 0/0   | 0/0     | 2/2    | Yes   | No   |
|                | Beech-Nut    | 2/2   | 11/11   | 0/0    | Yes   | No   |
| Nestlé         | Gerber       | 0/0   | 51/51   | 21/21  | Yes   | Yes  |
|                | Cerelac      | 0/0   | 2/2     | 0/0    | No  | No   |
| Lactalis       | Stonyfield   | 0/0   | 2/2     | 0/0    | Yes   | No   |



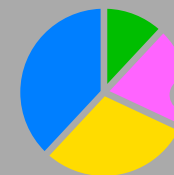
# Annex VI Performance on commercial CF product label Code requirements

The full assessment is presented in the following [excel file](#).

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