



Reckitt's Response to the ATNI Report

Reckitt's response to Access to Nutrition Initiative BMS Marketing Index 2024

Final 23 May 2024

Introduction

On 26 March 2024, Access to Nutrition Initiative (ATNI) published their Breast-milk Substitutes (BMS) Marketing Index 2024 (hereinafter referred to as The Index). In addition, separate country assessments have been undertaken, namely in Vietnam, US, China, Indonesia and Germany - hereinafter collectively referred to as The Country Assessments. As of the date of this report, only separate country reports for Vietnam and the US have been published.

The Index and Country Assessments collectively assess the marketing policies and practices of 18 of the largest breast-milk substitute (BMS) manufacturers. Reckitt is one of the BMS manufacturers included in the Index and Country Assessments.

We value independent assessment and the external perspective that it brings. We support the aims and ambitions of ATNI, in assessing BMS manufacturers policies and marketing practices. However, we strongly disagree with Reckitt's rating in The Index, and would like to reiterate that Reckitt is fully compliant with the local legislation, regulation and industry codes that regulate marketing practices for infant and young child formula products, and our BMS Marketing Policy, whichever is the stricter, in all countries in which we operate. ATNI, by applying a methodology that goes beyond the purview of local legislation, regulations and industry codes and imposes the burden of responsibility solely on the BMS manufacturers, is factually incorrect, is likely to be mis-interpreted and causes reputational damage.

ATNI also undertook a BMS Marketing Index and two country assessments in 2021, and Reckitt responded to this report on 20 December 2021. Commensurate with our commitment to transparency, and continued positive engagement, we have set out below our response to The Index, Reckitt's rating, and outlined a number of areas that we disagree with, under the following headings:

- Executive Summary
- Reckitt and our Core Commitments
- The ATNI BMS Marketing Index 2024
- Feedback on The Index, Findings and Country Assessments
- Corrective Actions
- Recommendations and Conclusions.

Executive Summary

The Index and methodology applied are complicated to comprehend, making it also difficult to explain both internally and externally. We hope that based on the information provided in this report, the reader has a better understanding of our concerns and issues. Whilst we appreciate ATNI's independent assessment, we take objection to the scope, methodology and therefore the resulting rating. Whilst we support having an independent view of private sector performance versus a common standard, the standard should be pragmatic, stretching but realistic, and also recognise the clear distinction in accountability of the different stakeholders. The benchmark should be versus local legislation, regulations and industry codes. ATNI completely disregard the local context and the extent of the BMS manufacturers accountability.

We realise that the ATNI Report represents the end result of a significant investment in time and resources. This is equally true for the BMS manufacturers being assessed, as countless hours are invested in not only providing information to ATNI, but also reviewing ratings, following up on findings and updating the business. Given the complex nature of The Index, the issues we have with the ATNI methodology and scope, coupled with the time spent on The Index, this makes our continued support of ATNI difficult to endorse internally and externally.

ATNI have clearly stated that *'they are dedicated to objectively assessing and improving the contribution made by the food and beverage sector in addressing global nutrition challenges of overweight, obesity, diet-related diseases, and undernutrition, by designing and regularly publishing various indexes and other private sector accountability tools'*. However, the sole focus of The Index (and earlier similar indexes) is on BMS manufacturers and assessing full Code compliance on their marketing practices. ATNI fail to recognise the contribution that Reckitt and other BMS manufacturers make in addressing the nutrition challenges facing many countries and communities, particularly given world events in the last few years. We have invested, and continue to invest significantly in research and development, to ensure we provide the highest quality and most nutritional products possible. The superior nutritional content and relative 'closeness' to breast-milk of our portfolio is also not recognised nor taken into consideration by ATNI.

The results for 2024 have not been compared to 2021. Significant changes in scope and methodology mean that there is not a like-for-like comparison versus the 2021 Index, and also mask the actual progress being made by companies. Lower scores vs. the 2021 Index, does not mean we are 'less compliant'.

The reported results are misleading, and do not reflect progress that companies are making, nor actual performance. The key areas that we have taken issue with on The Index and resulting ratings, are further discussed below, under the heading, 'Feedback on The Index, Findings and Country Assessments'.

Reckitt and our Core Commitments

We recognise that we have a significant role to play during the first 1000 days - the period from conception up to a child's 2nd birthday. We all agree that breastfeeding is the best source of nutrition for infants, and we support the World Health Organisations (WHO) recommendations for exclusive breastfeeding in the first six months of life, and continued breastfeeding up to two years of age and beyond. Complementary foods should only be introduced from around 6 months of age onwards. These principles are the foundations of our BMS Marketing Policy, introduced in April 2018¹. If a mother is not able to, or chooses not to breastfeed, the WHO states that industrially developed formulas that are as close as possible in nutritional composition to breastmilk, are the only suitable alternative. We are committed to provide the highest quality and most nutritious alternative products possible, and to market these responsibly and ethically at all times.

The ATNI BMS Marketing Index 2024 (the Index)

The Index assessed 18 baby food manufacturing companies and the extent to which they market their Breast-milk Substitutes (BMS) in line with 'The Code'. 'The Code' in this context, includes the 1981 International Code of Marketing of Breast-Milk Substitutes (WHO Code of 1981) and all subsequent relevant World Health Assembly (WHA) resolutions, up to and including WHA 71.9.

ATNI applies The Code definitions of BMS which includes any formula milks (or products that could be used to replace milk), in either liquid or powdered form, including all formulas for special medical purposes (FSMP's), that are specifically marketed for feeding infants and young children from birth up to 36 months of age. This scope of definition of BMS applies irrespective of the product classification in national legislation.

Companies are assessed on two main components, both aimed at evaluating the extent to which a company's policies and practices align with the various provisions of The Code:

- Corporate Profile: determines the extent to which the company's policies/management systems/disclosure align with The Code.
- Country Studies assessment: measures companies' marketing practices in selected countries. Five countries were selected by ATNI, of which Reckitt has infant and child nutrition products in three of the five countries - Vietnam, Indonesia and the USA. Separate country reports are issued.

¹ https://reckitt.com/media/k5qh0l4i/rb-s-policy-procedures-on-marketing-of-bms_nov-2020.pdf

Feedback on The Index, Findings and Country Assessments

We disagree, and take issue with the ATNI compliance rating of 5.8%, as reported. Our objections have been grouped under the headings: Reported results are Misleading, Scope, Methodology and Selection Criteria, and are set out as follows:

Reported Results are Misleading

Like for Like Comparison:

In the ATNI 2024 reporting, the results have not been compared to 2021. The significant changes in scope and methodology means that there is not a like-for-like comparison versus the 2021 Index. Whilst ATNI did commit to publishing a like-for-like analysis of what the scoring would have been for each company included in the 2021 Index, were the previous methodology been applied, this has not been provided.

For those BMS manufacturers included in the 2021 Index, nearly all scored lower in the 2024 Index, but this does not mean they are 'less compliant'. The lower scores are driven primarily by increased penalties, type and number of countries included and how country non-compliances are calculated. These areas are further discussed below. These changes are substantial, and result in a direct lack of comparability vs the 2021 Index and also masks the actual progress being made by the company.

High level of overall ATNI compliance despite not having a BMS Policy in place:

The final score of four BMS manufacturers is (relatively) high but they each scored under 5% for the Corporate Policy element of the assessment. The final score of these four manufacturers is derived almost exclusively from the in-country assessments, and from markets where they each have less than 5% market share, and a significantly smaller portfolio vs. the larger players.

Top Line Reporting of Results - Combined BMS scores per Company:

The final results of 18 BMS manufacturers and their level of compliance, has been reported alphabetically vs in order of level of compliance, which highlights the lack of logic of the Index, and also the ability to understand and explain the individual company ratings.

Scope

The Code - A set of Recommendations, not legally binding:

The Code is a set of recommendations only, and are not legally binding for the purposes of the WHO's Constitution (Article 23)² They are for Member States to translate into local laws, existing regulations, or other suitable measures based on their national contexts and public health

² For a summary of health instruments under the WHO Constitution, as well as whether they are legally binding in character or not, please refer to the Annex to the Background Information related to the identification by the Intergovernmental Negotiating Body of the provisions of the WHO constitution under which the instrument should be adopted from [11 July 2022](#) .

objectives. On their own, the WHO Code of 1981 and subsequent relevant WHA resolutions are not legally enforceable.

ATNI's methodology assesses manufacturers marketing practices and labelling infringements against The Code: it fails to benchmark companies' performance vis-a-vis national laws as a minimum. National laws are binding regulatory instruments, and as such the only legitimate instrument to benchmark against.

Reckitt is fully compliant with the local legislation that regulates marketing practices for infant and young children formula products in all countries that we operate in. To suggest we are non-compliant is factually incorrect, is likely to be mis-interpreted and causes reputational damage.

Reckitt can only be rated as non-compliant if we fail to comply with local legislation, and whatever part or full provisions of the WHO Code of 1981 and WHA resolutions have been implemented into local legislation.

Importance of the local regulatory context, particularly on labelling practices:

The requirements on what to include on BMS product labels falls under the jurisdiction of the local regulatory authorities. Labels generally require local ministry of health (MOH) approvals before a product can be launched. Local regulatory authorities dictate what must be included on a label. Failure to include specific regulated information, or including information that has not been approved by the relevant MOH, will result in the rejection of the label, and the product not being approved for market launch. ATNI has included a number of non-compliances that relate to wording inclusions on labels, however, the labels (in their entirety) have been approved by the local MOH and are therefore fully compliant with local regulations.

Definition of BMS:

We support exclusive breastfeeding in the first six months of life and that breastmilk is the best source of nutrition for an infant. No other beverages are necessary in this first six months of life, as breast-milk alone satisfies an infant's nutritional needs. Therefore, only infant formula (formula suitable for the feeding infants up to six months of age), should be considered as a breast-milk substitute. Complementary Foods (CF) should only be introduced from between four to six months of age, based on Health Care Professional (HCP) recommendations, and alongside continued breastfeeding for up to two years of age and beyond.

Worthy to note, is that there is no global alignment on what constitutes a BMS, and countries have differing definitions and incorporation of BMS marketing restrictions into local legislation. Consequently, non-compliances on products for infants older than 6 months, where these products are not classified as a BMS per local legislation, should not be taken into consideration.

Inclusion of Foods for Special Medical Purposes (FSMPs) as BMS:

FSMPs include formula products that are distinctly formulated for infants with special medical conditions, who are not able to take, absorb, digest, metabolise and/or excrete breast-milk. They are intended for use under medical supervision only and are generally speaking, not available per normal commercial channels. FSMPs are not a substitute for breast-milk and hence non-compliances on FSMPs should not be taken into consideration.

Inclusion of Third-Party Marketing Practices:

Non-compliance marketing practices from third parties (i.e. social media providers, online retailers, resellers, traders) on BMS products have been attributed to Reckitt.

In some instances, Reckitt may have a contractual relationship with a third-party, but this third-party is not a subsidiary, is not under Reckitt's management or operational control, nor are they operating as an 'extension of Reckitt' and hence our sphere of influence is limited if not non-existent. The contracts that Reckitt has with these third-parties does include appropriate provisions around the third-party organisation conducting its marketing and business practices in accordance with all relevant local regulations and/or voluntary industry codes. We do regularly monitor these organisations and their marketing practices, but can only raise awareness and request corrective actions if we observe a non-compliance with local regulations and/or voluntary industry codes. Furthermore, we cannot demand, influence, or impose any type of restrictions as to how any third parties are operating, as this would be seen as an abuse of market position and result in substantial penalties.

As noted earlier, the scope of ATNI is to assess BMS manufacturers and the extent they market their BMS products in compliance with The Code. Article 11.3 of the Code notes: *'independently of any other measures taken for implementation of the Code, manufacturers and distributors of products within the scope of The Code should regard themselves as 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 them'*. The third-parties are not manufacturers or distributors and it is therefore incorrect and inappropriate to attribute any of the third-party non-compliances to Reckitt.

Methodology

Geographic Penalties:

There has been a significant increase in the geographic penalties applied, starting at 90% and then reducing. In the 2021 and earlier indexes, two types of penalties were applied per product category: 25% geographic penalty and a 15% regulatory penalty. These were applied as a flat rate penalty (i.e. not dependent on size of revenue, market share).

In the 2024 Index, one penalty is applied (per product category) starting at 90% and then gradually reduced based on the relative proportion of sales where the company upholds its commitments beyond legal compliance. The application of this penalty is complex and unclear, and disadvantageous to companies with a higher proportion of their BMS presence in countries where local legislation is limited/non-existent (i.e. lower-risk countries).

A company could have a BMS Marketing Policy, and thus rate high on the initial corporate profile assessment, but have significant penalties applied (in Reckitt's case 73% on infant formula (IF) and 66% on follow-on (FO)) which resulted in an overall low scoring. Other BMS manufacturers who had a similar initial corporate profile assessment, but whose stated policy position is wider (which is open to interpretation), has had a lower penalty applied, and this has resulted in a higher overall scoring. This does not result in a representative level of compliance with The Code, but more a complicated equation, based on company policy positions that are doubtful, size of the company revenues on penalty application and also based on unsubstantiated sales revenue data (see below).

The significant increase in penalties being applied results in a lack of comparability vs 2021, and masks the actual progress being made in terms of policy improvements. The computation is complex and also difficult to explain both internally and externally.

Revenue data:

Euromonitor 2021 revenue data was used to calculate the geographic penalties applied per product category (see above). However, ATNI were not willing to provide the source data nor provide the list of countries whose data was included. We were therefore unable to verify if the data used was correct. From a listing of countries provided by ATNI, it appeared that a number of Reckitt Higher-Risk countries were not included (Brazil, Costa Rica, Dominican Republic, Panama), and this impacted the percentage of sales revenue for the penalty computation. In addition, Reckitt's infant and child nutrition business in China up to the date of sale (September 2021) should have also been included in the revenue computations. These omissions, meant that the percentage of revenue for IF and FO products covered under Reckitt's BMS Policy is understated, resulting in an overstatement of the geographic penalties being applied for IF and FO. We raised this with ATNI prior to the publication of the report, but they were unwilling to amend their calculations or conclusions.

In addition, as ATNI were not willing to provide the source data, we could not verify if the split of revenue between routine formula and FSMPs for IF and FO is correct. This also influences the geographic penalty computations.

Country Non-compliances:

The in-country scores of low/medium/high, are solely based on the absolute number of non-compliances found, with no correlation to the size of the manufacturer's portfolio or market

share. This methodology severely disadvantages larger BMS manufacturers, with a portfolio of products across the 0-36 month range. Companies with a small (er) portfolio or with only 1-2 products in a particular product category (Infant Formula for example) have a significant advantage. Whilst ATNI did report the market share of each BMS manufacturer in each country (reference Table 3, page 23 of the March 2024 report), it was not clear vs. the number of non-compliances reported.

The change in how non-compliances are calculated (absolute number) vs the 2021 Index (relative to the size of the portfolio) is disadvantageous to larger companies. This results in a direct lack of comparability vs 2021, and masks the actual progress being made by the company.

In addition, non-compliances reported in the in-country assessments do not differentiate based on who (which actor) has committed the non-compliance. For example, a non-compliance on a product label, is directly attributable to the manufacturer vs. advertising on an on-line retail platform by an independent re-seller is actually attributable to a third party and should therefore be excluded or at a minimum treated differently. As noted above under Scope, whilst Article 11.3 of the Code does talk about *'manufacturers responsibility to monitor marketing practices and taking steps to ensure their conduct conforms at every level'* the in-country assessments and non-compliances reported should be excluded based on what can be controlled by the manufacturer.

Selection Criteria

BMS Manufacturers Included:

The 2024 Index included 18 BMS manufacturers vs. nine in 2021. This was in response to recognising the importance of a level playing field for industry and applying the same standards for larger and smaller BMS manufacturers, and also including companies with a regional or only national focus. Whilst extending the number of manufacturers is positive, many of the newly added companies, do not have a) a presence outside their home market, and b) do not have a BMS Marketing Policy in place. This raises questions on the usefulness of the compliance levels being reported. A more realistic approach could be country reports that review all actors in the local market context and not only the BMS manufacturers. This would therefore include all on-line platforms, retailers, social media providers.

Countries Included:

The number of countries included in the in-country assessment was increased from two to five, in order to assess the main markets of the newly added BMS manufacturers added in 2024 (see above). The increase in the number of countries included, coupled with the inclusion of countries that have minimal marketing restrictions as part of local legislation (Germany, USA), results in a higher non-compliance score. Given the major BMS manufacturers have presence in at least three of the five countries selected, this has resulted in (on average) a lower country compliance score

vs the smaller manufacturers that have presence in only one country. This results in a direct lack of comparability vs 2021, and masks the actual progress being made by the company.

In addition, two of the newly added companies did not have any BMS business in the five countries selected, and several only had BMS businesses in one market, and were rated non-compliant. This questions the validity of inclusion of a number of companies.

Corrective Actions

The majority of findings are on products that are a) outside the scope of local legislation in all three countries where Reckitt has infant and child nutrition products and/or b) the result of marketing actions from third-parties for which Reckitt cannot be held responsible. Hence, no corrective actions are necessary.

We have however reviewed the findings to identify areas where the findings could be an improvement in our practices, and these are outlined below:

1. Corporate Profile: review and update particular provisions of our BMS Marketing Policy to ensure greater clarity.
2. Product Labels: review certain products to improve particular labelling statements.
3. Continue to encourage contractual third parties to act in compliance with local legislation: Reckitt is committed to be fully compliant in all markets we operate in, and we encourage the same behaviour with our commercial partners. We have implemented an independent online and offline compliance monitoring programmes in all ASEAN markets where we have a BMS presence. This includes engagement of a third party vendor to monitor the online eCommerce platforms and to request removal of non-compliant third party listings. In addition, we have engaged a local third party vendor to undertake local compliance field audits and an internal BMS compliance monitoring programme in one particular ASEAN market. We will continue with both of these programmes for the foreseeable future.

Recommendations and Conclusion

The number of findings resulting from marketing actions of third-parties is significant and we would welcome a discussion with ATNI on how we can best address. It is in all of our best interests to have all parties being fully compliant (with local regulations) as any non-compliant practices unfortunately reflect badly on the manufacturer and the industry as a whole. Due to the sensitivities of the category and the complexity of local regulations, our vision is for all e-platforms to operate similar to an official store approach - and one that therefore can be controlled and regularly monitored by the manufacturer.

We would be open to a deeper dive dialogue with ATNI and Industry Associations on third party activities in particular markets, as a way to bring improvement in how these parties operate, and/or reiterating the need to incorporate further provisions of The Code into local legislation. In the intervening period, and as noted in earlier communications, all findings related to Third Parties should be separately reported, and should not be attributed to the BMS manufacturer.

The focus of ATNI is on the marketing of BMS only - and we believe this should be extended to also include other foods and beverages that are often part of the diets of infants and children. This could be part of a study on the lack of nutritional content and unsuitability of locally prepared drinks (i.e. rice milk) and/or other substitutes.

Our response to ATNI and The Index, is an illustration of our long standing relationship with ATNI and support of their core mission. Our engagement to drive improvement is unwavering. We hope that our comments and observations are taken in the spirit intended. As noted above, we do take objection to Reckitt's compliance rating, as Reckitt is fully compliant with the local legislation, regulation and industry codes that regulate marketing practices for infant and young child formula products, and our BMS Marketing Policy, whichever is stricter, in all countries in which we operate. To suggest we are non-compliant is factually incorrect, is likely to be misinterpreted and causes reputational damage.

We look forward to the opportunity to continue to engage and dialogue with ATNI, Industry Associations and other industry players, in order to collectively drive improvement.