

## **FAU position on final Ofcom consultation: food and drink advertising to children – extension to under 16s**

**22 December 2006**

The FAU was set up in 1995 under the auspices of the Advertising Association as a centre for information, communication and research on the issue of food advertising to children. FAU membership is composed of multi-national food companies, agencies and media, providing a cross-representation of the food advertising industry.

The FAU welcomes this opportunity to respond to Ofcom's statement and further consultation published on 17 November 2006. The comments below relate to the one issue on which Ofcom is now consulting, as follows:

*In light of the impact of Modified Package 1, in particular on the revenues of music channels, Ofcom is seeking views on Modified Package 1 in so far as it extends the restrictions contained in Package 1 to children up to 16.*

### **1. General comments**

- The FAU welcomes Ofcom's rejection of the pre-9pm watershed, as this would have been tantamount to a complete ban on the advertising of food and soft drink products on television, and would have impacted on adult airtime. Given that advertising restrictions will have little or no impact on child obesity or problems of overweight, and that advertising has at best only a "modest" direct impact on children's food preferences, we agree with Ofcom's analysis that this would have been a disproportionate approach with considerable impact on the broadcast and programme production sectors.
- The FAU is disappointed that Ofcom has decided to apply the FSA's nutrient profiling model, even though the food industry (represented by the FDF) argues it is a flawed model. We underline that it was developed solely for Ofcom's use in applying restrictions in television advertising.
- We also regret that Ofcom has dismissed the industry's "Package 4" proposals for volume and content restrictions, and that it has "banked" or ignored all the changes in the nature and balance of advertising that industry has made since 2003.

### **2. Extension to under 16s**

- The FAU finds the late extension by Ofcom of the restrictions to under 16's is both regrettable and disproportionate.
- This will impact on adult airtime, even though Ofcom recognises that adults are a legitimate audience for commercial communications as they are able to make informed decisions about advertising messages<sup>1</sup>.
- It therefore captures within the scope of the restrictions for the first time programmes that would not have been caught by the younger profile 4-9's, as well as niche channels (such as music channels) with a strong teenage audience profile. It disproportionately affects cable and satellite services with small audiences and younger audience profiles.

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<sup>1</sup> 5.27(d), page 22, Ofcom statement and further consultation, 17 November 2006

- This will have a significant impact on these broadcasters not originally caught by the proposed restrictions.
- It will also affect food and soft drink manufacturers, the impact on whom is significant but has not been measured at all in Ofcom's Regulatory Impact Assessment. A number of food and soft drink manufacturers have public voluntary commitments not to market to under 12's and the extension to under 16's creates complications for their marketing strategies.
- The FAU believes the sudden "capture" of new channels within the scope of the restrictions, and the fact that they only have a few weeks to respond to proposals that have a significant effect on their business plans, is unfortunate in terms of regulatory best practice. It is also surprising, given the questionable evidence base or developed reasoning in Ofcom's consultation of the need to widen protection to teenagers.
- Given the above issues, in particular the fact there would now be an impact for the first time on music channels, the FAU is concerned to note, in Ofcom's December 2006 media literacy bulletin, that Ofcom may have already have taken its decision, regardless of the outcome of this consultation<sup>2</sup>.

### 3. The evidence for extending to under 16's

Ofcom's decision appears to be based on its view that obesity is a problem in the teenage years, that older teenagers have more spending power, and that they influence younger siblings in terms of eating habits. The FAU believes this extension is inconsistent with Government policy, not justified by academic research, and not in line with the evidence about children's cognitive development.

#### **Inconsistency in Government Policy**

- The Government's own focus, as stated by the Minister for Public Health, Caroline Flint MP, is on primary school children (under 12's). The Minister has stated publicly<sup>3</sup> that this does not mean that the Government is not concerned about teenagers, but that it is important to concentrate on younger children as food preferences are developed at an early age.
- The Government's PSA target for reducing the year on year rise in childhood obesity is focused on under 11's, which was addressed in the White Paper on *Choosing Health* in 2003.
- The Government's social marketing programme, which aims to combat the barriers of healthy diets in children, again focuses in parents and carers of children under 11 in line with the PSA target.
- The content proposals for broadcast, which the industry is currently reviewing in terms of the non-broadcast code, focus on primary school children in line with Government policy.

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<sup>2</sup> Ofcom states that it has "decided that one of its regulatory objectives is to reduce significantly the exposure of children under 16 to the advertising of food and drink products that are high in fat, salt and sugar". (page 12),, and that there will be a short and focused consultation "as a result of Ofcom's decision to target regulation to ensure the protection of the under 16's .... (page 13).

<sup>3</sup> On 22 May 2006, in an Answer to a Parliamentary Question by Stephen O'Brien MP, Caroline Flint said "as announced at the food and drink advertising and promotion forum on 26 April, (her) concerns are focused on protecting primary school aged children". On 8 November 2006, at the FAU Conference, she reiterated that the Government's main focus was on the under 12's.

- The extension to under 16's in terms of volume restrictions by Ofcom, after originally targeting under 10's, is therefore inconsistent with Government policy in this respect.

### **Evidence base for extending restrictions**

- Out of the 636 individual responses to Ofcom's consultation earlier this year, some 45% (286) supported a pre-9 pm ban, which Ofcom rejected, while only 1% of responses (8) explicitly asked for under 16's to be included, which Ofcom has accepted. (There are some grounds for believing that a considerable number of the calls for a pre-9 pm ban were generated as a direct response to campaigns by certain consumer groups).
- It is also worth noting that most respondents had children under the age of 10 and there were very few responses from parents with teenagers.
- In terms of the research underlying Ofcom's proposal, there appears to be little evidence demonstrating the need to expand the advertising restrictions up to 16 years old. Of the key 49 studies reviewed and presented by Sonia Livingstone, only 11 (22%) extend their analysis up to 15 year old children, and none of these actually belongs to those specifically addressing the issue of advertising to children.
- The extension to under 16's appears to be a consequence of Livingstone's finding that media literacy (universally acknowledged to grow with age) does not actually protect children from the impact of advertising. Yet the vast majority of academic experts including the American Academy of Paediatrics believe that media literacy is an important factor that helps children negotiate the commercial world around them.
- None of the key studies reviewed by Sonia Livingstone actually examines the supposed link between food advertising and obesity in children over 12 years. The children studied in these reports were aged between 2 and 12 years old and the reliability of sample sizes provided is questionable, with all sample sizes falling between 42 and 192 children.
- None of the 49 key studies cited by Livingstone in both the 2004 and 2006 reports found that older children, eg those above 12 years old, should be targeted for restrictions of food advertising.
- The link from food preferences to health remains an inference (Livingstone), and few experiments have been conducted on teenagers, leaving most causal claims focused on the effects of advertising on children. However, she argues there is "little reason to suppose that teenagers (and indeed adults) are unaffected by advertising"<sup>4</sup>.
- To conclude, the research evidence for extending the restrictions to under 16's remains questionable.

### **Children's Cognitive Development / media literacy**

- Dr Brian Young (School of Psychology, University of Exeter) said that by 6-7 years children understand that advertisers are informing about products and by 10-11 they understand the persuasive intent of advertising<sup>5</sup>.

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<sup>4</sup> Public Policy Research, March – May 2006

<sup>5</sup> Dr Brian Young, School of Psychology, University of Exeter, International Journal of Advertising and Marketing to Children, September/October 2000

- A clinical psychologist, Piaget, concluded that children are considered to enter the ‘concrete operational’ stage of development between 7-12, and the ‘formal operational’ stage (Piaget)<sup>6</sup> at around 12 years old. From around 7, children develop the ability to think around a problem or task. From around 12, they are able to reason hypothetically and think logically for themselves, making judgements about their experience in a quantified way<sup>7</sup>.
- In academic research cited in Ofcom’s own Media Literacy review (February 2005), Ofcom cites research showing that children can distinguish between commercials and programmes between the ages of 3 and 7, and make “significant leaps” in their ability to distinguish advertisements on the basis of their persuasive intent. From 11-16, they “become more able to understand the complex social contexts and meanings related to consumption”<sup>8</sup>.
- The above underlines the difference between younger children, who are more vulnerable, and teenagers.

### **3. Use of BARB criteria**

- The FAU accepts that one aspect of Ofcom’s decision to extend restrictions to under 16’s from under 10’s is based on the availability of existing tools, ie the current age bands used by BARB data. We agree that BARB data provides the only meaningful tool to restrict volume and scheduling, and that the only existing rating categories are for 4-9’s or 4-15’s.
- We understand that BARB does collect data on children aged 10 years, 11 years and 12 years, and that it would have been possible for BARB to devise different banding which would have addressed Government objectives, without going to under 16’s.
- We are not aware as to whether such options were explored by Ofcom, but good regulatory practice would suggest that this option should have been fully considered in terms of its practicality and impact.

### **4. Timetable for implementation**

- The implementation of scheduling restrictions on HFSS food and soft drink products by March is a big challenge, given Ofcom’s publication of its preliminary decision/consultation so late in the trading period for 2007, when programme budgets for next year have already been committed, and affects broadcasters in different ways.
- The FAU acknowledges the difficulty that Ofcom will have in deciding dates of implementation that will affect broadcasters in an equitable way, but we urge decisiveness at this stage, in order to avoid further market uncertainty.
- However, we would encourage a phased implementation for those most seriously affected, particularly the music channels, towards the end of 2007.
- The FAU believes that a timescale could be achieved that would meet the objectives of the Government’s review in 2007, and Ofcom’s own review in 2008.

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<sup>6</sup> Using various research methods, including observation, dialogue, and small-scale experiments, Piaget identified 4 main sequential stages of development: the sensor-motor (age 0 – 2); pre-operational (age 2 – 7); concrete operational (age 7 – 12); formal operational stage (age 12+). Smith et al (1988;2003).

<sup>7</sup> Piaget in Elkind 1974

<sup>8</sup> page 17, Ofcom – The Media Literacy of Children and Young People