

Section 4

Rationale for regulation

4.1 It is clear from the studies of available research commissioned by Ofcom and referred to in Section 3 that, while many factors influence food preferences, television advertising has a modest direct effect on food preferences, and thus is likely to be a contributory factor in dietary imbalance leading to ill-health and increasing obesity amongst children. In addition, it seems likely that television advertising may indirectly reinforce other influences. With that in mind, it is appropriate for Ofcom to consider the case for extending regulation of HFSS foods in the light of its statutory duties described in Section 2. In considering what additional regulation might be proportionate, Ofcom will need to balance a variety of considerations, including those discussed below. The section concludes with a discussion of the balance between the pros and cons of extending regulation.

The interests of children

4.2 As explained in Section 2 above ('Ofcom's role'), Ofcom must take account, where relevant, of 'the vulnerability of children' when carrying out its duties. This requirement is already reflected in existing advertising standards (see Section 2 - 'Current regulation'). For example, these already prohibit advertisements that encourage or condone excessive consumption of any food having regard to generally accepted nutritional advice, as well as not permitting advertisements that encourage children to ask their parents to buy products, or disparage good dietary practice, or make health claims that are not backed up by sound scientific evidence.

4.3 Nonetheless, the conclusion that television has a modest direct effect on children's food preferences and thereby also acts as a contributory factor to the risk of child obesity, obliges Ofcom to consider how the impact of television advertising of HFSS foods, particularly on the most vulnerable younger children, can be reduced⁴⁵. Given the relative lack of media literacy, particularly amongst younger children (see paragraph 3.14 above), it cannot be assumed that young children are well informed about the products they consume or about which, in the case of the youngest children, they express preferences to their parents. Clearly, younger children have only limited ability to make trade-offs between the nutritional benefits that they receive from consuming HFSS products and the health costs of that consumption, so as to optimise their overall welfare.

Views and opinions of consumers

4.4 In performing its duties, Ofcom is required by section 3(4) (k) of the Communications Act to have regard to the opinions of consumers in relevant markets and of members of the public generally. As explained in Section 3 ('Attitudes to HFSS products and advertising'), parents and carers accept they have a responsibility for their children's diets. Nonetheless, they also appear to want support from advertising regulation. Asked to choose between various possible regulatory options, ranging from no change to a complete ban on advertising before 9pm, 81% wanted some form of regulation, while just 11% wanted no change at all. Just under half (48% agreement) supported a ban on HFSS advertising before 9pm, but support was greatest for a ban

⁴⁵ As reported in Section 3 ('Attitudes to HFSS products and advertising'), it is not until the age of 8 that most children have grasped the intention of television advertisements to persuade.

on advertising during children's airtime (57% agreement). In terms of scheduling restrictions, there was least support for a total ban on HFSS advertising (24% agreement). There was significant support for providing more nutritional information. 80% agreed that requiring advertisements to include a nutritional message about the product would be worthwhile, whilst 65% said that advertisers should not be allowed to make health claims for a product if something else about it was 'unhealthy'⁴⁶.

The interests of different ethnic communities

- 4.5 In accordance with section 3(4) (l) of the Communications Act, and race discrimination legislation, we have also looked at the implications of food advertising and different policy options for dealing with it for different ethnic communities. While there is relatively little data on obesity amongst children of different ethnic communities, Ofcom's review of available research found that children who are of Asian descent are four times more likely to be obese than those who are white. Given that people of Asian descent and of Black Caribbean origin have been shown to be particularly susceptible to obesity, Ofcom believes that the policy options it has set out should have a beneficial impact on these groups. The Chief Medical Officer reported that in 1999 obesity was 50% higher than the national average amongst Black Caribbean women and 25% higher amongst Pakistani women than amongst the population as a whole⁴⁷. To the extent that the various efforts to promote healthier diets and lifestyles (including any measures taken by Ofcom) are successful, we believe that people from these ethnic communities are likely to derive greater benefit in proportion to those from other communities. As the race impact assessment at Annex 7 explains, the deliberative research that we shall be conducting as part of the consultation exercise will seek to gauge the views of respondents from different ethnic communities to the various policy options.

Plurality and choice

- 4.6 We have also considered the possible impact of regulation on plurality and choice in television services, in the light of section 3(2) of the Communications Act. There are currently eight free-to-air public service channels containing significant amounts of children's programming – four owned by the BBC, and four owned by commercial licensees⁴⁸.
- 4.7 The non-BBC channels face a risk that revenue lost through advertising restrictions would not be fully replaced, which might make the scheduling of children's programming less attractive. However, given that terrestrial broadcasters will be conscious of the need to establish their identity with young viewers, of the opportunity to inherit adult viewers following children's programmes, and of the scope for targeting advertisements at adult viewers watching with children, we believe they are likely to be cautious about cutting children's programming⁴⁹. We consider that terrestrial channels would be likely to respond by seeking substitute advertising, and implementing cost-cutting measures, such as commissioning less programming, using more repeats, importing more programmes and generally showing lower quality programming.

⁴⁶ *Childhood Obesity*, Chart 103.

⁴⁷ 2002 CMO report, chapter 5.

⁴⁸ BBC1, BBC2, CBeebies, CBBC, ITV1, Channel 4, Five, CiTV.

⁴⁹ It is significant that ITV recently launched a new free-to-air children's channel, even though it will have been aware of the possibility of HFSS advertising restrictions. (Disney also plans to launch a new channel in spring 2006.)

- 4.8 There are also 19 subscription channels aimed at children⁵⁰, most of which are concerned that food advertising restrictions could impact on the viability of their channels. As revenue estimates in Table 7 demonstrate, the imposition of advertising restrictions would most likely be damaging. As in the case of terrestrial channels, we consider that subscription channels would be likely to respond in ways that could have an effect on the range and quality of programming available to children - for example, by looking for substitute advertising, and relying on more imported programmes and less commissioned programming, broadcasting more frequent repeats of existing programming or providing lower quality programming. It is possible that one or more channels would choose to relocate to another EU jurisdiction where HFSS advertising restrictions would not currently apply but from where they could still broadcast to the UK. However, this would not necessarily reduce the choice to consumers.

The scope for voluntary regulation

- 4.9 Ofcom is required to have regard to 'the desirability of promoting and facilitating the development and use of effective forms of self-regulation' (see Section 3 'Ofcom's role'). Food manufacturers have made clear to Ofcom that they are anxious to avoid further regulation, not least because action taken in the UK may influence regulatory thinking at European level. Some food manufacturers have taken voluntary action to limit the scope of advertising to children, and to restrict the use of certain techniques. For example, both Kraft and Cadbury Schweppes have taken the decision not to advertise to younger children⁵¹. As the impact assessment explains, a number have also taken other measures to promote healthier diets and lifestyles for example Walkers' recent move to reduce the level of saturated fat in its crisps and ASDA's "Great Stuff" campaign.
- 4.10 These initiatives have contributed to the limited change in the balance of food and drink advertising on television that has already taken place (see paragraph 3.5). However, it is clear that the food industry continues to spend large amounts of money on television advertising. It may be that some manufacturers have adopted voluntary constraints in the hope of averting formal regulation, and that if this implicit threat was removed, they would throw off these constraints. In Ofcom's view, if voluntary regulation is to be a credible way forward, it would need to involve specific and meaningful commitments to reduce significantly the impact of food advertising on children by a broad cross-section of the industry, as well as broadcasters. It is not yet clear that the industry would be able to deliver such commitments.

The role of other initiatives

- 4.11 Given the research findings that dietary habits are determined by many different factors, and that by itself, television advertising has only a modest direct effect on food preferences, Ofcom does not consider that it would be proportionate for broadcasters to bear the brunt of regulatory intervention seeking changes to dietary habits, if other measures were not being taken.

⁵⁰ Children's channels available on Sky (excluding '+ 1' services) include Cartoon Network, Boomerang, Nickelodeon, Trouble, Trouble Reload, Jetix, Disney Channel, Toon Disney, Playhouse Disney, Discovery Kids, Nick Junior, Pop, Tiny Pop and Toonami.

⁵¹ Kraft has decided not to advertise foods that do not meet its 'Sensible Solutions' criteria, or any foods to children under 6 (http://www.kraft.com/responsibility/nhw_sensiblesolution.aspx). Cadbury Schweppes has decided not to advertise any products to children under 8. <http://www.cadburyschweppes.com/EN/EnvironmentSociety/CaseStudies/PromActiveLSUK.htm>

- 4.12 The Government has already announced, in addition to seeking changes in the way food is promoted, a variety of measures aimed at encouraging and helping children and their parents to adopt healthier lifestyles including:
- Healthy Start (to modernise the Welfare Food Scheme and enable low-income parents to exchange vouchers for fresh fruit & vegetables, milk or infant formula);
 - Sure Start (wide-ranging DFES initiative to support parenting in the early years);
 - Children's Play (using lottery money to fund building of children's playgrounds);
 - Healthy Schools (investment in improving the nutritional value of food across the school day including new nutritional standards for school meals, rules for vending machines and tuck shops, and encouragement to consume fruit and vegetables);
 - Physical Education and School Sport (by 2008, 85% of 5 - 16 year olds will spend at least 2 hours per week on PE and school sport. All children will spend 4 hours per week on PE and school sport by 2010);
 - School Travel (schools are developing plans to encourage more walking, cycling and bussing to school);
 - Social marketing (a programme of education and support to improve the healthiness of people's lifestyles in the area of diet and physical activity);
 - Obesity Care (assisting GP's and Primary Care Trusts in taking childhood obesity care forward);
 - Simplified food labelling (work with industry to develop a simple front of pack labelling model that will help consumers choose foods that make a positive contribution to a healthy diet);
 - Reformulation of foods (work with the food industry to reduce the amount of added salt, saturated fat and sugar in processed foods).
- 4.13 One of the biggest impacts on the dietary balance issue is likely to come from a change in public attitudes and eating habits. Recent reports, including the FSA's Consumer Attitudes to Food and Nielsen's regular purchase data indicate a picture of falling sales of HFSS foods as well as rising interest in and consumption of fresh foods.
- 4.14 It will take time to see what impact these initiatives will have. Clearly, it is vital for the success of Ofcom's efforts that any extension of television advertising regulation forms part of a package of measures to tackle factors bearing on obesity, and is complemented by effective self-regulation of other media. Without this, there is a risk that the restrictions will have little positive impact on children's health, and that promotional expenditure would simply be diverted from the more regulated television sector, to the cost of the broadcasters, only to be reallocated to other areas where advertisers could communicate more freely to children.

Conclusions

- 4.15 Having regard in particular to evidence that:

- television advertising is one of a number of factors that affect children's food preferences, and hence their propensity to consume foods that are high in fat, salt or sugar and may contribute to obesity;
- children's diets which are high in HFSS products increase the risk ill-health in later life;
- the Government recognises that the risks of ill-health are affected by many factors, and is tackling the problem on a number of fronts;
- self-regulation at the level of individual manufacturers seems unlikely to be effective, given the patchy nature of voluntary restraints and the pressures to compete;
- advertising restrictions are unlikely to have a significant effect on plurality and choice in the provision of television programming for children

Ofcom considers that measures need to be taken on an industry-wide basis to reduce the impact of television advertising of HFSS products, particularly to younger children.

4.16 Having regard to the evidence that:

- the direct contribution of television advertising to food preferences is modest, and that other factors are more significant;
- the most vulnerable children are those under the age of 8, and that by the age of 11-12, children have developed a critical understanding of advertising;
- while many parents favour a ban on advertising during children's airtime, most do not want to see such a ban extended to advertising up to 9pm; and
- food advertising revenues are important to the finances of many broadcasters, particularly those dedicated to children's programming

Ofcom considers that any such measures should be proportionate in their impact on broadcasters, taking account of both the benefits and of the costs of increased regulation.

Consultation with stakeholders

4.17 In the course of developing practical policy options, we consulted extensively with a wide range of stakeholders, including:

- consumer and health interest groups;
- relevant government departments and agencies in England, Scotland, Wales and Northern Ireland;
- representatives of broadcasters, and individual broadcasters;
- the Advertising Standards Authority and the Broadcast Committee on Advertising Practice; and
- representative bodies of food manufacturers, and individual companies.

4.18 In the course of meeting with representatives of consumer groups, food manufacturers and other stakeholders, all have acknowledged that children need to be encouraged and helped to improve their dietary habits, and a wide variety of

possible options have been canvassed. This extensive consultation with stakeholders has helped us to gain a fuller understanding of the implications of particular approaches, and to refine our policy proposals. It has also highlighted for us the differing, sometimes opposing, views held on this contentious and complex issue. All these points are explained in Section 5.