

Annex 1

Responding to this consultation

Special notice

A1.1 An additional aim of this consultation is to seek views on the form and wording of the BCAP content standards proposals which have been drawn up for direct insertion into the Television Advertising Standards Code⁶². Ofcom retains statutory responsibility for advertising standards, and must approve any rule changes recommended by BCAP in accordance with Section 324 of the Communications Act 2003. We therefore invite views from the organisations and persons listed in Section 324, together with those of any other interested parties, on the revised standards set out in Annex 8. Ofcom will consider these views carefully when considering whether to approve the proposals, with or without modifications, and in doing so may, where appropriate, share responses with BCAP.

How to respond

A1.2 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 30 June 2006**

A1.3 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

A1.4 Please can you send your response to foodadvertising@ofcom.org.uk.

A1.5 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Julia Richards
Floor 5
Content & Standards
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3806

A1.6 Any comments relating to the FSA's nutrient profiling model should be sent to the FSA at:

promokidsfood@foodstandards.gsi.gov.uk

and copied for information to Ofcom at the address above.

⁶² See paragraphs 5.27 – 5.29

- A1.7 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- A1.8 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

- A1.9 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Ian Blair on 020 7981 3494.

Confidentiality

- A1.10 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).
- A1.11 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
- A1.12 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions. Ofcom will exercise due regard to the confidentiality of information supplied.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

- A1.14 Following this ten-week consultation, Ofcom will assess the responses and refine the proposals as appropriate before issuing a final statement later in the year. This timing will be subject to the potential need for a short final consultation on a stakeholder produced option as discussed in paragraph 5.23. The effect of the statement would be to pass the final advertising content standards to BCAP for incorporation into the Television Advertising Standards Code and for implementation with immediate effect. The content rules would be immediately applicable to any campaign conceived after the statement date, but we would expect a grace period for existing campaigns and for new campaigns in the pipeline with expenditure already incurred. At this stage a six months grace period for content rules seems a reasonable period, although it will be necessary to monitor developments, including the expected timescale for the Government's own change monitoring programme in 2007. Scheduling rules or volume restrictions would come into force on 1 January 2007 for immediate effect.
- A1.15 This consultation is concerned solely with television advertising, but with the expectation that development and publication of rules for the non-broadcast sector by CAP will follow as soon as is practicable after Ofcom's final statement. Ofcom

will, on a similar timescale to the CAP work, investigate whether and what action may need to be taken in relation to radio advertising.

- A1.16 Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

- A1.17 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.
- A1.18 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director, Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom (Scotland)
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
Tel: 0141 229 7401
Fax: 0141 229 7433
E-mail: vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.
- A3.6 Where appropriate Ofcom may share responses to this consultation with relevant third parties if it believes this would facilitate the carrying out of any of its functions.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Television advertising of food and drink products to children – options for new restrictions

To (Ofcom contact): foodadvertising@ofcom.org.uk

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing Name/contact details/job title
Whole response Organisation
Part of the response If there is no separate annex, which parts?

Can Ofcom share the part of your response that relates to content rules with BCAP?

Yes No

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Q1. Do you agree that the regulatory objectives set out in paragraph 5.2 above are appropriate?

Q2. Do you consider that it is desirable to distinguish between foods that are high in fat, salt or sugar and those that are healthier in order to achieve the regulatory objectives, or could an undifferentiated approach provide a reasonable alternative?

Q3. If so, do you consider the FSA's nutrient profiling scheme to be a practical and reasonable basis for doing so? If not, what alternative would you propose?

(Note: The nutrient profiling scheme was developed by the FSA and handed to Ofcom following extensive consultation (see FSA web site). This being the case, and given the scheme itself and the science upon which it is based fall outside Ofcom's area of responsibility and expertise, it is not appropriate in this consultation to seek responses on those matters).

Q4. Do you agree that voluntary self-regulation would not be likely to meet Ofcom's regulatory objectives or the public policy objectives?

Q5. Do you agree that the exclusion of all HFSS advertising before 9.00pm would be disproportionate?

Q6. Do you agree that all food and drink advertising and sponsorship should be excluded from programmes aimed at pre-school children?

Note: In order to finalise and approve changes to advertising content standards Ofcom may, where appropriate, need to share responses to the following questions with BCAP. **Please note that an additional aim of this consultation is to consult on the wording of the proposed BCAP rules in accordance with section 324 of the Communications Act 2003 (see Annex 1).**

Q7. Do you agree that revised content standards should apply to the advertising or sponsorship of all food and drink advertisements?

Q8 Do you consider that the proposed age bands used in those rules aimed at preventing targeting of specific groups of children are appropriate?

Q9. Do you consider the proposed content standards including their proposed wording to be appropriate, and if not, what changes would you propose, and why? (Please see the special notice in Annex 1.)

Q10: Do you consider a transitional period would be appropriate for children's channels in the context of the scheduling restrictions, and if so, what measure of the "amount" of advertising should be used?

Q11: Do you consider there is a case for exempting low child audience satellite and cable channels from the provisions of Package 3?

Q12: Do you agree that there should not be a phase-in period for children's channels under Package 3?

Q13. Which of the three policy packages would you prefer to be incorporated into the advertising code and for what reasons?

Q14: Alternatively, do you consider that a combination of different elements of the three packages would be suitable? If so, which elements would you favour within an alternative package? (You should note that the analysis in the Impact Assessment has focused on estimating the costs of restricting scheduling, volume, and content separately and would therefore allow consideration of other combinations of the same elements).

Q15. Where you favour either Package 1 or 2, do you agree that it would be appropriate to allow children's channels a transitional period to phase in restrictions on HFSS / food advertising, on the lines proposed?

Q16. Do you consider that the packages should include restrictions on brand advertising and sponsorship? If so, what criteria would be most appropriate to define a relevant brand? If not, do you see any issue with the prospect of food manufacturers substituting brand advertising and sponsorship for product promotion?

Q17: Ofcom invites comments on the implementation approach set out in paragraph 5.45 and 5.46.

Supplementary Impact Assessment questions

IAQ1: Do you agree with the basic modelling approach set out above by Ofcom? Are you aware of other data sources which could be used to corroborate the data used by Ofcom?

IAQ2: Do you agree that the range of substitution percentages set out in table 7.3 reflect the likely mitigation scenarios? Explain the reasoning behind your answer.

IAQ3: For the other non-children's cab/sat channels, is it appropriate to apply the volume restrictions to all of these channels or should there be an audience related threshold applied to these channels before the restrictions come into effect? If there should be an audience related threshold, please provide views on what this should be.

IAQ4: Do you agree that the range of substitution percentages set out in table 7.7 reflect the likely mitigation scenarios for volume restrictions? Explain the reasoning behind your answer.

IAQ5: Ofcom would be interested to hear your views on the assumptions and methodology used in this Impact Assessment. If you do not agree with the assumptions and methodology, set out above, please provide the reasoning behind this and details of an alternative approach.

Annex 5

Glossary

ASA: The Advertising Standards Authority (ASA) is the independent body set up by the advertising industry to police the rules laid down in the non-broadcast advertising codes. In pursuance of the principle of promoting self-regulation, Ofcom contracted out its regulatory functions in relation to broadcast advertising content to the ASA and BCAP (see below), thus bringing under one roof the regulation of both broadcast and non-broadcast advertising.

BARB: Broadcasters' Audience Research Board Ltd. This body is responsible for providing estimates of the number of people watching television any one time including data on which channels and programmes are being watched, at what time, and what type of people are watching. The data is available for reporting a national level and at ITV and BBC regional level and covers all analogue and digital platforms.

BCAP: Broadcast Committee of Advertising Practice. The Committee of Advertising Practice (CAP) is the industry body within the ASA organisation responsible for developing the UK's non-broadcast advertising Codes. A sister committee, BCAP (Broadcast Committee of Advertising Practice), was formed to write and enforce the codes of practice that govern TV and radio advertising when Ofcom contracted broadcast advertising regulation to the ASA. The committee comprises representatives of broadcasters licensed by Ofcom, advertisers, advertising agencies, direct marketers and interactive marketers.

Big Five product group: pre-sugared breakfast cereals, savoury snacks, fast food, confectionery and soft drinks

BMI: Body Mass Index – a formula which relates a person's body weight to height and which is used to identify obesity levels

CAP: See BCAP above

Cab/sat: Cable or Satellite broadcaster, broadcasting in the multi-channel environment.

CHD: Coronary heart disease

CMO: Chief Medical Officer - the UK Government's principal medical adviser and the professional head of all medical staff in England

Core Category products: Food (including all sub-sectors), Soft Drinks (including all sub-sectors) and Chain Restaurants as categorised by Nielsen Media data

CRR: Contract Rights Renewal – an arrangement to protect advertisers' contract terms with ITV required by the OFT in response to concerns over market power in the sale of airtime following the merger of Carlton and Granada

DH: Department of Health

Dietary Reference Values: a series of estimates of the amount of energy and nutrients needed by different groups of healthy people in the UK population

Dose Response Function: links the changes in body weight to a change in energy balance from, in this instance, substituting HFSS foods by more healthy alternatives

DTT: Digital Terrestrial Television

Equity brand characters: characters that have been created by the advertiser and which have no separate identity beyond their associated product or brand e.g. Ronald Macdonald, Tony the Tiger

FDF: The Food and Drink Federation, a trade association representing the UK food and drink manufacturing industry

FMCG: Fast Moving Consumer Goods – low value, high sales volume products in everyday use: e.g. foods, cleaning products, toiletries etc.

FSA: Food Standards Agency – Government advisory body on food standards and nutrition

GDA: Guideline Daily Amounts are a guide to showing recommended daily levels of different nutrients needed to maintain health

Gross Rating Point (GRP) total: The Gross Rating Point total for an advertising campaign is the sum of all the TVRs (see below) for the individual advertising spots in that campaign

HFSS products: products which are high in fat, salt or sugar

IPA: The Institute of Practitioners in Advertising is the trade body and professional institute for 241 leading agencies in the UK's advertising, media and marketing communications industry, covering the Creative, Digital Media, Direct Marketing, Healthcare, Media, Outdoor, Sales Promotion and Sponsorship sectors.

Licensed characters: those characters with no historical association with the product and that are borrowed equities, e.g. characters from films that may be licensed by film distributors to food manufacturers or fast food retailers as a marketing tool

NAR: Net Advertising Revenue

Nielsen Media Research: an research source of advertising activity data for industry

NDNS: National Diet and Nutrition Survey - a survey of a national sample of adults aged 19 to 64 years with the aim of gathering information about the dietary habits and nutritional status of the British population

NMES: Non-milk extrinsic sugars – broadly speaking added sugar as opposed to naturally occurring sugars

Nutrient profiling: evaluating the overall balance of nutrients in any food or drink

Nutrient profiling model: a system that scores the overall balance of nutrients in any food or drink by identifying foods that are high in fat, salt or sugar, but recognises the importance of fruit and vegetables, cereal, meat, and dairy-based products in the diet

PSB: Public service broadcaster (BBC, ITV, Channel 4, Five)

QALY: A Quality Adjusted Life Year takes into account both quantity and the quality of life generated by healthcare interventions. It is estimated by assigning every life-year a weight on a scale where one represents full health and zero represents death.

SAP: Station Average Price – the estimated cost of audience delivery for advertisements on a TV station, based on advertising cost per thousand for a specific audience category

TDCC: Total Dedicated Children's Channels

Television impact: An impact is equivalent to one viewer watching one advertisement, which is usually normalised in terms of a 30 second advert. 10 impacts could be 1 person watching 10 advertisements or 1 advertisement 10 times, or 10 people watching one advertisement.

TVR: Television ratings - expressed as a percentage of the potential TV audience viewing at any given time. May be calculated either for the total TV audience or for particular sub-demographics

TWF Directive: Television Without Frontiers Directive – this EC Directive sets down the legal framework for broadcasting in the EU, and amongst other things specifies the overall amount of advertising that a broadcaster is allowed in any one day

VOL: Value of life estimate - using Department of Transport methodology developed in its Valuation of Benefits of Prevention of Road Accidents and Casualties 2003 which incorporates medical costs, lost output and human cost (based on willingness to pay)

WHO: World Health Organisation