



Television advertising of food and drink products to children

Options for new restrictions

Publication date: **28 March 2006**

Closing Date for Responses: **30 June 2006**

Contents

Section	Page
Foreword	1
1 Executive summary	3
2 Background	13
3 Research and analysis	20
4 Rationale for regulation	28
5 Policy options	34
Annex	Page
1 Responding to this consultation	49
2 Ofcom's consultation principles	52
3 Consultation response cover sheet	53
4 Consultation questions	55
5 Glossary	57
6 Impact assessment	60
7 Race impact assessment	176
8 BCAP content rule proposals	178
9 New research on advertising foods to children – an updated literature review	Published Separately
10 Trends Analysis	Published Separately
11 Creative techniques used to target children	Published Separately

Foreword

In recent years there has been growing social and public policy concern about the increase in childhood obesity. That increase has been driven by a complex web of inter-related factors in which changes in life-style, changes in diet and changes in marketing and promotion all play their part.

Against that background, Ofcom was asked in 2004 to research the impact of television advertising of food and drink to children in this mix; and to consider proposals on strengthening its rules on television advertising of food and soft drinks to children. The report published by Ofcom in July 2004, building on extensive previous research, showed that television food advertising has a modest direct effect and a larger but unquantifiable indirect effect on children's preferences, consumption and behaviour. Our conclusion was that the status quo was an undesirable option and that there is a case for strengthening the rules on advertising to children.

In the meantime, the market has already produced a significant shift in the balance of television food promotion to children: the overall volume of food, drink and restaurant advertising to children dropped by around 13 per cent in 2005; and a number of food and soft drink manufacturers have voluntarily decided to withdraw from television advertising in children's airtime.

The television advertising industry's self-regulatory body, BCAP, has also proposed a range of restrictions on advertising techniques and treatments in television food advertising to children. Ofcom welcomes these proposals which form an integral part of the policy options we are consulting on.

That leaves the important issue of whether, and if so what, further volume restrictions there should be on food advertising to children. Ofcom has concluded that some form of volume restriction is justified and proportionate. But, as is the case with many social policy issues, there is no easy one size fits all, or one size suits all, policy prescription. This difficulty is reflected in the absence to date of any proposals from industry, beyond BCAP's treatment changes, which can command broad support across broadcasters, advertisers, retailers and food manufacturers.

In this document, therefore, we consult on a range of three core options for different types of volume restriction, designed to produce the best balance between an effective shift in television food advertising to impact on children's preferences and behaviours without an unduly adverse effect on the funding for range and quality in children's programmes or on the legitimate activities of food manufacturers and retailers. Each option has its own advantages and disadvantages. Ofcom is agnostic as between them: this is an open consultation.

Indeed, Ofcom actively invites proposals for a fourth option, which could be a permutation of the package of measures in the three core options or could be a completely new proposal. We would welcome any such option capable of commanding broad support and of making a positive and substantive contribution to changing children's preferences, behaviour and consumption of food and drink.

We seek your views. Changes in television food advertising have a part, but a modest part, to play in the overall mix that produces the solution that society as a whole wishes to see: a change in children's behaviour, parental responsibility, schools policy, opportunities for exercise, food promotion, and many other factors that will enable our children to live healthy lives today and tomorrow.

Stephen A. Carter, Chief Executive

Section 1

Executive summary

Introduction

- 1.1 Ofcom is the independent regulator of television, radio, telecommunications and wireless communications services in the UK. Part of our role is to set standards for television advertising. All television broadcasters must comply with these standards in relation to any advertising they transmit. In late 2004 we transferred the responsibility for the Television Advertising Standards Code to the Advertising Standards Authority (ASA), including the functions of complaints handling and policy development. Under this co-regulatory scheme Ofcom still retains final responsibility for all television advertising standards as the backstop regulator under the terms of the Communications Act 2003.
- 1.2 Ofcom also has duties towards:
- furthering the interests of citizens and consumers;
 - the protection of under-18s;
 - maintaining a sufficient plurality of television services;
 - securing the availability throughout the UK of a wide range of television services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - preventing undue discrimination between advertisers;
 - regulating in a proportionate, transparent and least intrusive manner.

Background

- 1.3 The Government would like to restrict the promotion of food and drink high in fat, salt or sugar (HFSS foods) to children in all its forms¹, including on broadcast and non-broadcast media) and to encourage the promotion of healthier alternatives. This is against a background of social and governmental concern about rising childhood obesity and ill-health due to dietary imbalance, specifically the over-consumption of HFSS foods and the under-consumption of fresh foods, fruit and vegetables. Both the Department of Health (DH) and the Food Standards Agency (FSA) have identified television advertising as an area where action should be considered to restrict the advertising of HFSS products to children. The Government has therefore asked Ofcom to consider proposals for strengthening its rules on the television advertising of food to children.
- 1.4 The Government concluded in its 2004 White Paper “Choosing Health” that *“if there was not a change in the nature and balance of food promotion by early 2007, the Government would take action to implement a clearly defined framework for regulating the promotion of food to children”*.
- 1.5 The FSA recognised that Ofcom, which has no expertise in nutrition or in health-related issues and is therefore reliant on the expert advice of the DH and FSA, might need a means of identifying foods that are high in fat, salt or sugar. This could be

¹ For example in schools, in vending machines, at point of sale etc

relevant if Ofcom intended to target advertising restrictions only at the products singled out by Government as being part of the problem, whilst not disadvantaging the promotion of healthier products. The FSA has therefore developed and extensively consulted on a nutrient profiling model, specifically for Ofcom's use. The model scores food and drink products based on their nutrient composition. The aggregate score determines, based on a threshold set by the FSA, whether the product is high or low in fat, salt or sugar.

Research and analysis

- 1.6 As an independent regulator Ofcom must be satisfied that there is sufficient link between television advertising of HFSS products and children's food preferences/consumption to justify considering whether restrictions are appropriate. If restrictions are justified, Ofcom must also consider what form these should take and whether they should apply to all food and drink advertising to children or should attempt to specifically target HFSS food and drink advertising to children.
- 1.7 Accordingly, in 2004 we undertook a research project drawing together information from previous academic research, national food surveys and lifestyle research, re-analysis of information available in food industry and broadcasting databases, as well as new, bespoke qualitative and quantitative projects.
- 1.8 The study concluded that television advertising has a 'modest direct effect' on children's food preferences, consumption and behaviour. Indirect effects are likely to be larger, but there was insufficient evidence to determine the relative size of the effect of TV advertising on children's food choice, by comparison with other relevant factors such as exercise, trends in family eating habits inside and outside the home, parents' demographics, school policy, public understanding of nutrition, food labeling and other forms of food promotion. The survey also examined parents' attitudes to television advertising and regulation, and found that parents accept responsibility for their children's diets, but believe that increased regulation of food advertising would help them to encourage their children to eat more healthily.
- 1.9 Ofcom has since undertaken further research work:
 - updating our original analysis on the size, spend and impact of the market for television advertising of food;
 - updating our original analysis of the television viewing patterns of children;
 - analysing the content of food and drink advertising to children on television;
 - updating the review of academic research into the effects of television advertising on childhood health and diet.
- 1.10 The new and updated studies confirm the original findings. There is now a growing body of evidence of the links between television advertising exposure and children's food preferences. It is also clear that whilst television advertising of food to children is declining each year, it remains significant; television is still the key medium for communicating messages about food and drink products to the widest audiences.

Rationale for regulation

- 1.11 We acknowledge that self-regulation by the food industry and by broadcasters could play a part in reducing the influence of food advertising, and that measures have already been taken by some food manufacturers to withdraw from targeting

advertising to younger children. We do not however believe that self-regulation alone will be a sufficient response to the issue given the difficulties of gaining consensus and commitment on a permanent basis across a wide spectrum of stakeholders, where robust action may be needed to achieve the desired effect.

- 1.12 In the light of all the above, of our statutory duties, of the research evidence, and noting the widely held belief that there is a societal benefit to reducing the amount of HFSS advertising that children are exposed to, we consider there is a case for strengthening the rules on food advertising to children.
- 1.13 We aim to develop measures that balance the health and social benefits against broadcast advertising's modest role and the costs to broadcasters if food advertising is restricted. We must take into account the fact that Ofcom must have regard to best regulatory practice, only to intervene where necessary, and to do so in a proportionate and targeted way. We also note the evidence that, in media literacy terms, 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 advertising². As stated above, it should be noted that any advertising restrictions imposed on broadcasting would be only one of a number of measures. There are a range of Government initiatives on childhood health and obesity and the DH is concerned to ensure that action is taken in respect of non-broadcast advertising, as well as broadcast, through its Food & Drink Advertising and Promotion Forum.

Regulatory objectives

- 1.14 The aims of further regulation should be to:
- reduce significantly the exposure of younger children to HFSS advertising, as a means of reducing attempts to persuade children to demand and consume HFSS products;
 - enhance protection for both older and younger children as well as parents by appropriate revisions to advertising content standards;
 - reduce the risk that children and parents may misinterpret product claims;
 - avoid disproportionate impacts on the revenue of broadcasters;
 - avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages;
 - ensure that any measures that are put in place are appropriate and sufficiently timely to enable Government to observe whether there have been changes to the nature and balance of food promotion by early 2007.

Nutrient profiling

- 1.15 The consultation asks whether the best approach to reducing the impact of HFSS advertising on children involves the use of an HFSS differentiation scheme such as nutrient profiling, or whether there are more appropriate and practical routes to achieve the same objective. If using a differentiation scheme is indicated as the best approach, it is necessary to weigh up whether the FSA nutrient profiling model mentioned above is the most practical solution, or whether there are other differentiation schemes that are preferable alternatives.

² *Childhood Obesity – Food Advertising in Context* (Ofcom, July 2004)

- 1.16 Ofcom is conscious that the FSA model is supported by some and opposed by others. For instance, the FSA's model has drawn criticism from the food manufacturing industry which considers that:
- nutrient profiling is wrong in principle as a regulatory tool, as few foods are harmful in moderation and it would demonise some foods as unhealthy;
 - the FSA's model is unscientific in its approach by fitting foods into a preconceived notion of what is unhealthy and what is healthy;
 - the use of nutrient profiling would lead consumers to adopt unbalanced diets;
 - the model wrongly assesses nutrients on a "per 100g" basis rather than a "per portion" basis;
 - using nutrient profiling would not treat advertisers equally and is potentially discriminatory.
- 1.17 But others have argued in favour of the model in that:
- the model is only intended as an indicator of high or low fat, salt or sugar content for regulatory purposes, and is invisible to the consumer;
 - it is necessary to identify HFSS products to avoid regulation that affects healthy and less healthy products in the same way;
 - without such a model, it would be more difficult to advertise healthier products to adults as well as children;
 - there is no real alternative to the per 100g basis which is also widely used outside the UK;
 - the model was drawn up and peer-reviewed by experts and is scientifically based.

Policy options

- 1.18 Against the background of our duties and the evidence summarised above, Ofcom has examined a number of potential ways of meeting its regulatory objectives, starting with those at either end of the spectrum of regulation.

Voluntary self-regulation

- 1.19 In pre-consultation with stakeholders, it was claimed by some that there have already been significant changes in the nature and balance of food advertising on television, that a number of food manufacturers have taken voluntary action to reduce the impact of food advertising on young children and to improve the nutritional information on food labels. It was also claimed that existing standards on food advertising provide a sufficient degree of protection when allied with voluntary self-regulation by industry (although some limited tightening up could be considered). There was a view therefore that there is neither need nor justification for restricting the amount of food advertising on television in order to reduce further its impact upon children.
- 1.20 There has undoubtedly been some change in the nature and balance of advertising on television since the Government's call for action. Expenditure on advertising of

Core Category³ products has declined as a share of total advertising expenditure in recent years, and Core Category advertisements as a proportion of all advertising impacts in children's airtime have also dropped. As regards self-regulation, Ofcom has made clear that it will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.

- 1.21 However, while Core Category's share of total advertising has dipped, the amount spent on Core Category advertisements has in fact risen in 2004 and 2005. Even if expenditure were to go into decline, it could take a long time to achieve an appropriate reduction in HFSS impacts on young children. As for the argument that existing advertising standards provide sufficient protection, Ofcom notes that these do not currently prevent the use of a variety of advertising techniques designed to make advertising attractive to young children.
- 1.22 It might seem, looking at the wide variety of voluntary actions taken by manufacturers, that voluntary self-regulation would meet the criteria for targeted and consistent action. However, while the possibility of greater regulation may have encouraged manufacturers and advertisers to exercise self-restraint in the short-term, there is no guarantee that they would continue to do so if the threat of new regulation was lifted.
- 1.23 In summary, Ofcom is not persuaded that voluntary self-regulation would meet its regulatory objectives.

Pre-9pm exclusion of HFSS advertising

- 1.24 We have also considered the option of excluding all HFSS advertising before the 9pm watershed. Excluding all HFSS advertising before 9pm would remove 82% of the recorded HFSS advertising impacts on all children (aged 4-15 years). Clearly, this measure would achieve a key regulatory objective of significantly reducing the impact of HFSS advertising on younger children. It would also contribute to enhancing protection for older children by reducing their exposure to HFSS advertising.
- 1.25 The FSA has provided Ofcom with an assessment of the benefits which they believe would result from restricting HFSS advertisements to children. This analysis has been included in Ofcom's Impact Assessment. In including this, Ofcom recognises that there are inherent difficulties in quantifying the health benefits of measures to restrict food and drink advertising on television. Our assessment of the likely impact of the various policy options set out in Section 5 is predicated on this basis.
- 1.26 In relation to this option of restricting HFSS advertising up to 9pm, the FSA estimates that the social / health benefits of such exclusion of HFSS advertising could be in the ranges £50 million – £200 million or £250million – £990 million per year depending on the value of life estimate that is employed. More details are given in the impact assessment.
- 1.27 However, in Ofcom's view, this option would undermine other regulatory objectives. Rather than being targeted at younger children, it would prevent adults from viewing advertisements for most HFSS food and drink products aimed at them, and could make television an unattractive medium for food and drink advertisers. In qualitative

³ Nielsen Media defines Core Category products as all food products, chain restaurants and soft drinks

research described in Section 3, parents have indicated that they do not favour a ban on HFSS advertising extending to 9pm. Importantly, Ofcom considers that on the basis of the current analysis, the impact on broadcasters would be disproportionate. We estimate that excluding HFSS advertising up to 9.00pm could cost broadcasters somewhere between £130 million - £240 million per year in lost advertising, rising to a range of £160 million - £290 million if Core Category advertising was excluded.

- 1.28 Accordingly, we have concluded that the exclusion of HFSS advertising before 9pm would not meet Ofcom's regulatory objectives (see paragraph 1.14 above), and that it is therefore not appropriate to proceed with this option.

Four options for consultation

- 1.29 Having reached the view that voluntary self-regulation and a pre-9pm exclusion would not meet Ofcom's regulatory objectives, there are a number of other options which could in our view meet those objectives. However this is a complex issue and it has become clear that no agreed common position is emerging between industry, consumer, medical and governmental interests, and it appears not to be possible to reconcile differing views amongst industry interests (broadcasters, platform operators, advertisers, food manufacturers, retailers). In these circumstances, we have developed three packages for consultation to meet the regulatory objectives. But, acknowledging the complexity of the issue, we are also inviting stakeholders to submit a fourth package of proposals which may be a permutation of the measures already in the three packages, or may be a completely new proposal. If a completely new proposal is received which appears to command broad support across broadcasters, advertisers, retailers and manufacturers, which seems a sensible response to the issue and which meets Ofcom's regulatory objectives, it may be necessary to conduct a short additional final consultation on this proposal to allow other interested parties an opportunity to comment.

- 1.30 All the proposed three packages share two common elements:

- No advertising of or sponsorship by HFSS products in programmes aimed at pre-school children (less than 5 years old).

Research indicates that this is the most vulnerable group of children, not able to distinguish properly between programmes and advertisements and with no purchasing power. We do not consider it appropriate to allow HFSS advertising targeted at this group.

- A range of rules aimed at the content of all food and drink advertising, designed to reduce its impact on children generally, and to avoid targeting certain techniques at some age groups altogether.

The content rules have been drawn up by BCAP⁴, the broadcasting and advertising industry self-regulatory body responsible for the standards codes. We believed it appropriate to invite BCAP to submit proposals in the light of the co-regulatory arrangement referred to at the head of this summary. We will be working with BCAP

⁴ BCAP is the Broadcasting Committee of Advertising Practice. The self-regulatory committee has members from the broadcasting, advertiser and media communities, and is part of the ASA organisation.

to finalise and approve changes to the rules following consideration of responses to this consultation on both the substance of the BCAP rules and also on their wording⁵.

- 1.31 On their own, we consider that the content rules are insufficient to achieve the regulatory objectives but that they should form part of a blended approach together with rules aimed at excluding or reducing the amount of HFSS advertising at certain times of day. Briefly the provisions of the BCAP content rules for all food and drink are that:
- advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children;
 - advertisements must not advise or ask children to buy, or ask their parents to buy, the products. There must be no appearance of encouraging children to pester others to buy the products on their behalf;
 - promotional offers (including collectables and giveaways) in food and drink advertisements must not be targeted at children aged under 10;
 - advertisements must not encourage children to eat or drink the product only to obtain a promotional offer;
 - celebrities and licensed characters must not be used in food and drink advertisements targeted directly at children under 10;
 - nutrition claims must be supported by sound scientific evidence, and must not give a misleading impression of the health benefits of the product as a whole;
 - no nutritional or health claims may be targeted at pre-school children;
 - advertisements must not condone or encourage excessive consumption of any food or drink.
- 1.32 As stated, each of the three proposed packages contains the common elements mentioned above. The details of each package and its likely effects are discussed below.

Package 1 – Timing restrictions on specific food and drink products

- 1.33 The features of this package of restrictions are as follows:
- No HFSS product advertising⁶ to be shown in programmes made for pre-school children;
 - No HFSS product advertising to be shown in programmes specifically made for children;
 - No HFSS product advertising to be shown in programmes of particular appeal to children aged up to 9 years old⁷;
 - No sponsorship by HFSS products of programmes affected by the above restrictions;

⁵ See section 324 of the Communications Act 2003

⁶ This option makes use of a differentiation model such as nutrient profiling to identify specifically those products that are high in fat, salt or sugar

⁷ A programme with a 4-9 yr old child audience index of 120 or more is deemed to be “of particular interest” to 4-9’s.

- Application of BCAP content rules to all food and drink advertising and sponsorship.

1.34 The likely effects of implementing this package are as follows:

- the exposure of children (aged 4–15) to HFSS food and drink advertising will fall, we estimate, by⁸ 50%;
- terrestrial broadcasters' revenues will fall, we estimate, by roughly half a percent (0.5%) of their total revenues;
- children's channels revenues will fall more substantially – we would estimate by roughly 4% – 21% of total revenues (depending on the channel);
- the overarching impact on broadcaster revenues will be, we estimate, to reduce them by approximately £28million per year;
- there would be health benefits for children. Based on FSA data (see paragraph 1.25). These could be valued at amounts ranging around £63 million and £303 million⁹ (depending on the value of life measure used).

1.35 In summary, broadcasters as a whole would be likely to lose less than 1% of total revenues, which while significant, would appear to be sustainable. The impact on children's channels would be greater, as they derive between 4% - 21% of revenue from advertising HFSS food products¹⁰. Any measure excluding HFSS advertising from children's programming could therefore have a potentially damaging economic effect on these channels. In the worst cases (especially with the smaller channels), the loss of food and drink advertising could threaten the viability of the channel. Some may contemplate moving their established base to other European countries to avoid the restrictions, whilst still broadcasting to the UK.

1.36 In acknowledgement of these difficulties, if this package were adopted, we propose that the timing restrictions should be phased in for children's channels over a three year period.

Package 2 – Timing restrictions on all food and drink products

1.37 The features of this package of restrictions are as follows:

- No food or drink advertising to be shown in programmes made for pre-school children;
- No food or drink advertising to be shown in programmes specifically made for children;
- No food or drink advertising to be shown in programmes of particular appeal to children aged up to 9 years old;
- No sponsorship by food or drinks products of programmes affected by the above restrictions;

⁸ No viewing data exists for under-four year olds.

⁹ Drawn from the benefits calculations provided by the FSA. Calculations based on 2 methodologies: Quality of Life Years (QALY) and Value of Life (VOL). See impact Assessment for details.

¹⁰ The entire output of children's channels is regarded as children's programming. These channels would not be permitted to show HFSS advertising at any time.

- The above provisions do not apply to healthy eating campaigns supported or endorsed by Government;
- Application of BCAP content rules to all food and drink advertising and sponsorship.

1.38 The likely effects of implementing this package are as follows:

- the exposure of children (aged 4–15) to food and drink advertising will fall, we estimate, by 50%;
- terrestrial broadcasters' revenues will fall, we estimate by approximately half a percent (0.5% – 0.8%) of their total revenues;
- children's channels revenues will fall more substantially – we would estimate between 4 – 21% of total revenues (depending on the channel);
- the overarching impact on broadcaster revenues will be, we estimate, to reduce them by approximately £31 million per year;
- there would be health benefits for children. Ofcom has not estimated these, directly but estimates based on FSA data (see paragraph 1.25) would suggest they would be of a similar order of magnitude (albeit slightly lower) to benefits for Package 1 i.e. ranging around £63 million - £303 million per year (depending on the value of life measure used).

1.39 In summary, broadcasters would be likely to lose slightly more advertising revenue than under Package 1, but still less than 1% of their total advertising revenues. Once again, the impact on children's channels could be significant (though not materially different from the impact assessed for Package 1).

1.40 In acknowledgement of these difficulties, if this package were adopted, we propose that the timing restrictions should be phased in for children's channels over a three year period.

Package 3 – Volume-based restrictions on all food and drink products

1.41 The features of this package of restrictions are as follows:

- No food or drink advertising to be shown in programmes made for pre-school children;
- The volume of food or drink advertising and sponsorship to be limited at times when children are most likely to be watching:
 - limit to 30 seconds per hour (06.00 - 09.00 and 15.00 -18.00 weekdays; 06.00 – 13.00 weekends);
 - during the evening peak (18.00 - 20.00) and weekend afternoons (13.00 - 20.00) - limit to 60 seconds per hour;
 - limit for children's channels (except pre-school channels) of 30 seconds per hour all day.
- Application of BCAP content rules to all food and drink advertising and sponsorship.

1.42 The likely effects of implementing this package are as follows:

- the exposure of all individuals to food and drink advertising will fall, we estimate by around a third. We estimate that this would equate to just over 50% of children's (aged 4–15) impacts;
- terrestrial broadcasters' revenues will fall, we estimate by approximately 3% of total revenues;
- children's channels revenues will still fall but less substantially than for other packages – we would estimate by roughly 2% – 12% of total revenues;
- the overarching impact on broadcaster revenues will be, we estimate, to reduce them by approximately £90million per year;
- there would be health benefits for children. Ofcom has not estimated these, but the FSA (see paragraph 1.25) suggests they could be valued at amounts ranging around £64million - £309million (depending on which value of life measure is used).

1.43 In summary, the proposed volume limits have been set to reduce significantly the exposure of younger children to HFSS advertising when they are most likely to be watching. The greatest numbers of children (up to two million) are tuned in to television between 6.00pm and 8.00pm.

Conclusion

- 1.44 We consider that these three packages represent a fair and balanced approach to meeting the regulatory objectives. We are expressing no preference for any one alternative and invite comments on all these packages and on whether there are changes that could be made to improve them (detailed questions can be found at Annex 4). We also invite from stakeholders a fourth, as yet undefined, package which achieves broad support and which they believe would meet the objectives.
- 1.45 The consultation will close on Tuesday 6 June 2006. Ofcom will issue a final statement later in the year, which will enable any content standards to be incorporated into the BCAP code and implemented 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 which are already being developed. At this stage six months seems a reasonable grace 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 in to force on 1 January 2007 with immediate effect.
- 1.46 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.