

Section 5

Policy options

Introduction

5.1 In this section, we expand on Ofcom's regulatory objectives in the light of the evidence, describe the approach we have taken to consulting stakeholders, and propose a number of policy options for consideration.

Regulatory objectives

5.2 In the light of Ofcom's duties and the evidence outlined in Section 4 above, we have concluded 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, but that they should be proportionate. Specifically, Ofcom considers that the aims of further regulation should be to balance the following objectives:

- to reduce significantly the exposure of younger children to HFSS advertising, as a means of reducing opportunities to persuade children to demand and consume HFSS products. Since the only available tool for segmenting television audiences ignores children aged under 4, and divides the remainder into age brackets from 4-9 and 10-15, we propose that regulation aimed at younger children should focus on children under 10;
- to enhance protection for both older and younger children as well as parents by appropriate revisions to advertising content standards, so as to reduce children's emotional engagement with HFSS advertisements, and reduce the risk that children and parents may misinterpret product claims, and to reduce the potential for pester power;
- to avoid disproportionate impacts on the revenue of broadcasters;
- to avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages;
- to ensure that any measures that are put in place are appropriate and sufficiently timely to enable government to observe changes to the nature and balance of food promotion by early 2007.

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

Nutritional profiling

5.3 As explained in Section 2, the FSA has developed and extensively consulted on a nutritional profiling model that assigns food and drink to 'high in fat, salt or sugar' or 'healthier' categories depending on a cumulative assessment based on positive scores for fat, salt and sugar content, as well as negative scores for healthy nutrients: protein, fibre and fruit/vegetables/nuts. This scheme was devised with the help of independent experts for the specific purpose of providing an objective means for determining which food and drink products are HFSS and should be made subject to advertising restrictions. Table 8 below demonstrates how the scoring system works. Food products with a score of 4 or more are designated HFSS products, while drinks with a score of 1 or more are designated HFSS products. As a working example, a

packaged trifle scored: *energy* = 2; *saturated fats* = 2; *sugars* = 3; *sodium* = 0; *protein* = -1; *fibre* = 0; *f,v&n* = 0, giving a total score of 6, which is over the HFSS threshold of 4. Further details of the scheme can be found on the FSA's website⁵².

Table 8: Method for calculating the score of a food product per 100g using the FSA's nutrient profiling scheme

Add points	0	1	2	....	10
Energy (kj)	≤ 335	>335	>670	....	>3350
Saturated fats (g)	≤ 1	>1	>2	....	>10
Total sugar (g)	≤ 4.5	>4.5	>9	....	>45
Sodium (mg)	≤ 90	>90	>180	....	>900
Subtract points	0	1	2	....	5
Protein (g)	≤ 1.6	>1.6	>3.2	....	>80
Fibre (g)	≤ 0.7	>0.7	>1.4	....	>3.5
Fruit, vegetables and nuts (%)	≤ 40	>40	>60	....	>80

5.4 As indicated in Section 2, there have been criticisms of nutrient profiling by manufacturers on various grounds:

- some food manufacturers have criticised nutrient profiling as a means to categorise some foods as less healthy as wrong in principle, on the grounds that few food or drink products, if any, are harmful in moderation. They argue that the effect of nutrient profiling will be to unfairly 'demonise' some food and drink products as 'unhealthy', and lead consumers to adopt unbalanced diets. On the other hand, the FSA has stressed that the model is only intended for use as a pass/fail indicator for regulatory purposes with no consumer visibility - not as a guide to healthy diets for consumers. Moreover, they say, it is necessary to identify which food and drink products are potentially less healthy if over-consumed in order to avoid a crude approach to advertising regulation that affects healthy and less healthy products in the same way;
- some food manufacturers have said that the FSA scheme is unscientific and subjective in its approach as it fits foods into a preconceived notion of what is unhealthy and what is healthy. The FSA has pointed out that the model was devised by an independently chaired group of experts in food and nutrition and was scrutinised by an expert academic workshop and by the Scientific Advisory Committee on Nutrition (SACN);
- some food manufacturers have criticised the particular approach adopted by the FSA, arguing either that it is wrong to analyse HFSS content on the basis of a 100g portion, since this may be more than is usually consumed

⁵² <http://www.food.gov.uk/healthiereating/nutlab/>

at a serving, or that it ignores the fact that other products may be consumed at the same serving, which may render the whole healthier. The FSA has asserted there is no realistic alternative to the use of an objective measure such as per 100g, which is widely used inside and outside the UK, since there is no industry standardisation on what is an appropriate serving size. Two manufacturers of pizza could have two different definitions of a “portion”, to the confusion of a consumer trying to compare nutritional benefits;

- some manufacturers (e.g. confectionery manufacturers, who cannot realistically reformulate their products) argue that nutrient profiling is invidious and has a potentially disproportionate effect between manufacturers as it affects some more than others (e.g. cereal manufacturers who may be able to reformulate some products). The FSA points out that it is unavoidable that some manufacturers will be more adversely affected than others by measures to reduce consumption of products that are less healthy, but necessary if the public policy objective of improving dietary habits is to be achieved.

- 5.5 Ofcom has neither statutory responsibilities nor expertise in the field of food health, so is reliant upon the FSA for expert advice on the science and function of their nutrient profiling model. It will however fall to Ofcom to decide 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.
- 5.6 Recent analysis confirms that HFSS advertising accounts for over 80 – 90% of food advertising on television, so that, given the current balance between HFSS and non-HFSS television advertising, the regulatory ‘overspill’ from an undifferentiated approach into products not seen as part of the problem is likely to be comparatively limited. As well as responding to the food industry criticisms above, a straightforward approach to all food advertising would make for a less expensive system for both advertisers and manufacturers, as the costs of ensuring compliance would be less than one that required analysis of all relevant foodstuffs.
- 5.7 On the other hand, an undifferentiated approach aimed at all food and drink advertising could prevent advertising for healthier or other non-HFSS foods, and for some retailers who advertise broad ranges of foods. This would clearly have some adverse impact on potential advertising revenue for broadcasters, and would arguably reduce the encouragement to consumers to eat more healthy foods. It could also reduce a potential incentive on manufacturers to reformulate foods to lower the fat, salt or sugar content, and thereby avoid the restrictions. If all food and drink advertising were to be restricted, whether HFSS or not, there may be circumstances in which it would be sensible to permit exceptions (e.g. to allow Government-sponsored healthy eating campaigns, and possibly similar industry-sponsored campaigns which would otherwise be caught up in an “all food” approach).

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).

Policy options

5.8 Against the background of our duties and of the regulatory objectives Ofcom has developed in the light of the evidence, we have examined a number of potential options. Consistent with Ofcom's published guidance on assessing possible options, we have looked at a wide range of options, ranging from voluntary self-regulation, to substantial interventions⁵³. 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. Whilst the Impact Assessment is not determinative, it has helped to inform Ofcom's evaluation of the packages set out in this document. We analyse below the options at each end of the regulatory spectrum, before discussing those on which we have chosen to consult.

Voluntary self-regulation

5.9 In pre-consultation with stakeholders it has been put to Ofcom that:

- there have already been significant changes in the nature and balance of food advertising on television;
- a number of food manufacturers have taken action themselves to reduce the impact of food advertising on children (particularly the very young) and to improve the nutritional information on food labels;
- existing standards on food advertising provide a sufficient degree of protection, although there was some acceptance that there could be some tightening up of advertising standards;
- there is therefore neither need nor justification for regulating the amount of food advertising on television in order to reduce further the impact upon children.

5.10 On the face of it, there is much that is attractive in this argument. There has undoubtedly been some change in the nature and balance of advertising on television since the Government's White Paper was published in 2004. As the evidence in Section 3 shows, expenditure on advertising of Core Category products has declined as a share of total advertising expenditure in recent years. Over a similar period, the proportion of impacts deriving from Core Category advertisements in children's airtime has gone down to some extent. Ofcom is furthermore required by section 7(2) of the Communications Act to consider whether self regulation would

⁵³ *Better Policy Making – Ofcom's approach to impact assessments* (Ofcom, July 2005).
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

further or secure the matters to which it is required to have regard under section 3 of the Act. As explained in Section 2, Ofcom has made clear that it will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.

- 5.11 Notwithstanding this, it is clear from the data in Section 3 that, while the share of Core Category advertising as a proportion of total advertising expenditure has fallen over recent years, it remains significant in absolute expenditure terms, and has in fact risen in 2004 and 2005 and may well continue to rise in the future. Even if expenditure were to decline, it would clearly take a considerable time to achieve a significant reduction in the exposure of children to HFSS advertising.
- 5.12 As regards the likely effectiveness of voluntary self-regulation, it is noteworthy that the approach of individual manufacturers varies significantly. Some have decided not to target pre-school children, but continue to promote foods in programmes aimed at primary school children. Others refrain from advertising foods that do not meet their own criteria for products that may be promoted to children, while some manufacturers impose no such constraints. Unless a common industry position emerges it is unlikely that voluntary self-regulation would meet our criteria for targeted and consistent and effective action.
- 5.13 As to whether the 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. Finally, while the possibility of increased regulation may have encouraged manufacturers and advertisers to exercise self-restraint in the hope of averting stricter rules, there is no guarantee that they would continue to do so if the threat of more regulation was lifted.
- 5.14 For these reasons, Ofcom is unable to accept that voluntary self-regulation would meet its regulatory objectives, and has therefore concluded that it would be inappropriate to offer it as a policy option for consultation.

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

Positive messaging

- 5.15 Some children's channels are already broadcasting promotions that encourage healthier diets and lifestyles, while many food advertisements make reference to the need for a balanced diet and plenty of exercise. Some broadcasters have suggested that positive messaging about healthy lifestyles and better diets could be used to offset any negative impact of HFSS advertising, or that positive messaging could be financed from a central fund. A variant of this approach would allow advertisers to 'trade' points accrued for healthy messaging against expenditure on HFSS advertisements.
- 5.16 While this option also has attractive elements, it suffers from a number of practical drawbacks:
- there is little evidence to show whether counterbalancing HFSS advertising with positive messages about diet and lifestyle would help achieve Ofcom's objective of significantly reducing the impact of HFSS advertising on children;
 - it seems unlikely that an approach where positive messages become a form of currency to exchange could be made to work on a voluntary basis,

given the cost of producing programmes or promotions with positive messages and the pressure on manufacturers to compete;

- while some manufacturers might be prepared to offset HFSS advertising with positive messaging, there is no guarantee that all or most would be willing to follow suit.

5.17 Most importantly, positive messaging could not be introduced by Ofcom on a compulsory basis. We do not consider that our powers could be used for this purpose:

- whilst Ofcom's general duties (section 3 of the Act) are framed in terms of furthering the interests of citizens in relation to communications matters and furthering the interests of consumers, Ofcom's ability to promote or encourage is provided for only in certain limited areas such as competition (s3 (1) (b)), fulfilling the purposes of public service broadcasting, developing and using effective forms of self-regulation and encouraging investment and innovation (s3 (4)) – none of these would permit Ofcom to mandate positive messaging in editorial content;
- Ofcom is required to secure the application of standards (sections 319 to 321) that give adequate protection from the inclusion of offensive and harmful material. But these provisions are aimed explicitly at preventing negative outcomes from editorial content, rather than promoting positive messages; and
- section 319 (4) (f) provides that Ofcom must have regard to "*the desirability of maintaining the independence of editorial control over programme content*". Any requirement to include healthy-eating messages in programming would therefore risk breaching the principle of editorial independence.

5.18 Ofcom also does not have powers to require broadcasters or advertisers to contribute to a central fund, so it is unclear how participation by all relevant parties could be ensured. It is unclear how a trading mechanism would work, given that Ofcom has no powers to require such a scheme, or to secure compliance by advertisers. Finally, it seems unlikely that such a scheme could be put in place in time to enable Government to observe whether there have been changes to the nature and balance of food advertising by early 2007. Accordingly, we have concluded that solutions based on positive messaging could not deliver Ofcom's regulatory objectives, and that it is therefore not appropriate to consult on this option.

Pre-9pm exclusion of HFSS advertising

5.19 At the other end of the regulatory spectrum, we have 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 one of the key regulatory objectives, that of significantly reducing the impact of HFSS advertising on younger children. It would also contribute substantially to enhancing protection for older children by reducing their exposure to HFSS advertising. Based on data provided by the FSA, Ofcom estimates the social/health benefits of such an exclusion of HFSS advertising could be in the ranges £50million - £200million per year or £250million - £990million per year (depending on the value of life measure used). More details are given in the impact assessment.

- 5.20 However, this option would also undermine two other regulatory objectives. Most importantly, it would impose a disproportionate impact upon broadcasters, given that television advertising only has a modest impact upon food preferences. We estimate that the exclusion of HFSS advertising up to 9pm would cost broadcasters somewhere between £130 million - £240 million in lost advertising, rising to a range of £160 million - £290 million if Core Category advertising was excluded. Secondly, rather than being a targeted measure on younger children, its effect would be to restrict the viewing of audiences other than younger children. It would prevent adults from viewing advertisements for most HFSS food and drink products aimed at them, and could well make television an unattractive medium for manufacturers. In qualitative research described in Section 3, parents have indicated that they do not favour a ban on HFSS advertising extending to 9pm.
- 5.21 Accordingly, we have concluded that a ban on HFSS advertising before 9pm would not meet Ofcom's regulatory objectives, and that it is therefore not appropriate to consult on this option.

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

Four options for consideration

- 5.22 Although we have ruled out options at either end of the regulatory spectrum, we believe that there are number of options which could meet the regulatory objectives set out in paragraph 5.2, all of which have advantages and disadvantages. However, the issue of using advertising regulation to feed into the public policy initiatives on childhood dietary imbalance and obesity is extremely complex. This has been evident during the pre-consultation phase referred to in 4.17, where it became clear that it would be difficult, if not impossible, to find an agreed common position between industry, consumer, medical and governmental interests. In particular, it was not even possible to reconcile the widely differing views amongst industry interests (broadcasters, platform operators, advertisers, food manufacturers, retailers). Bearing this in mind, we have developed three packages for consultation which should meet the regulatory objectives, but which, we acknowledge, are likely to displease as many interest groups as they please.
- 5.23 We are also therefore inviting stakeholders to submit a fourth package of proposals in response to this consultation. This fourth package may be a permutation of the measures in the three packages, or it may be a completely new proposal. It must however be tailored to meet the regulatory objectives, and must lie between the "self-regulation only" and "prohibition up to 9.00pm" options that we have already determined would not be appropriate. Clearly, if a completely new proposal is received which appears to command broad support across broadcasters, advertisers, retailers and manufacturers, and which seems to us to be a sensible response to the issue and to the regulatory objectives, it may be necessary to conduct a short final consultation to determine if it has wider endorsement.
- 5.24 The three packages we are proposing all include two elements: that there should be no HFSS advertising in and around programmes aimed at pre-school children, and that there should be a set of content rules to reduce the impact of food and drink advertising. We discuss these two common elements before summarising the proposed packages.

Pre-school children

- 5.25 There is a limited amount of pre-school programming on UK channels – current slots include 15.30 to 15.50/16.00 on weekdays on ITV1, 06.00-07.25 on Saturdays on GMTV, 06.00-07.25 every day on Channel 4, and on Five from 06.00-09.00 (weekdays), 07.00-09.00 on Saturday, and 06.00-09.00 on Sunday. In addition, two digital channels (Tiny POP and Nick Junior) are aimed exclusively at pre-school children, and there is limited programming on other digital channels. Pre-school programmes are to be scheduled from 06.00 to 15.30 on the new CiTV channel.
- 5.26 Given the research evidence shows that pre-school children are not able effectively to distinguish between programmes and advertisements, let alone understand critically and appraise the persuasive messages of advertisements, we propose to exclude HFSS advertising or sponsorship from programmes aimed at this audience. Where restrictions are being applied to all food and drink advertising and sponsorship (regardless of whether it is for HFSS or non-HFSS products), the pre-school restrictions would also apply to all food and drink advertising. While this is only likely to have a modest effect on the number of HFSS advertising impacts on pre-school children (there is relatively little food advertising during pre-school programmes), the number of impacts on pre-school children would be further reduced by the restrictions discussed in Packages 1 to 3.

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

Advertising standards

- 5.27 As the lead responsibility for setting and maintaining advertising standards lies with BCAP, Ofcom asked BCAP to develop proposals for food advertising content standards. BCAP proposes that the revised standards set out in Annex 8 should apply to all advertising for food and drink (as do the existing standards), whether or not for HFSS products, and whatever the time of day⁵⁴. BCAP considers that the application of these standards to all food and drink products would in practice prevent inappropriate techniques from being used to promote HFSS products, without unduly restricting the marketing of other foods. Moreover, as the content rules have been proposed by the broadcast advertising industry self-regulator, it is likely that their sister body, the Committee of Advertising Practice (CAP), the non-broadcast advertising industry self-regulator, would be able to adapt the rules without undue difficulty for the non-broadcast media.
- 5.28 The aim of the revised advertising standards would be to reduce the level of children's emotional engagement with food and drink advertisements. In summary, the main provisions are as follows:
- food and drink advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children;
 - advertisements for food and drink 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 under 10;

⁵⁴ The content standards have been written to apply to both television and radio, although at this stage Ofcom is consulting only about television advertising.

- food and drink advertisements must not encourage children to eat or drink the product only to obtain a promotional offer;
- celebrities must not be used in food and drink advertisements whose content is targeted directly at children under 10. This would prevent advertisers from drawing on the authority and trust that children might vest in these characters;
- licensed characters must not be used in food and drink advertisements whose content is targeted directly at children under 10. This would prevent advertisers from using licensed characters (e.g. film or cartoon characters) that might make it difficult for younger children to distinguish between programmes and advertising;
- advertisers would remain free to use brand characters (that is those solely associated with a particular brand) on the grounds that they do not carry the same authority as licensed characters;
- 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 (under 5 years); and
- advertisements must not condone or encourage excessive consumption of any food or drink.

These provisions would apply also to sponsor credits⁵⁵. Government sponsored or endorsed healthy-eating campaigns would not be exempted from these rules.

5.29 On the basis of discussions with stakeholders we believe that the present trend towards television taking a reducing share of advertising expenditure may continue. However, we do not think that the proposed revisions to the advertising rules would, of themselves, have a significant impact on these revenues. We believe that advertisers would adapt their campaigns to comply with the new standards, rather than withdraw from advertising on television.

*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.

⁵⁵ Rule 9.4 of the Ofcom Broadcasting Code states that “sponsorship on radio and television must comply with the advertising content and scheduling rules that apply to that medium”.

Package 1 - Timing restrictions on specific food and drink products

5.30 In addition to the two common elements described above, the main components of Package 1 are the exclusion of HFSS product advertising or sponsorship⁵⁶ from children's airtime (the times at which programmes specifically made for children under 10 are broadcast), and around programmes of particular interest to children. This package would require the use of a differentiation scheme such as the FSA's nutrient profiling scheme to identify HFSS foods, and an audience index of 120 or more for children under the age of 10 would be used as a threshold to identify programmes of particular interest to this age group⁵⁷. The main times at which children's programmes are scheduled currently are shown in Table 9.

Table 9: Current scheduling of children's programmes

Children's airtime	Weekday mornings	Weekday afternoons	Saturday mornings	Sunday mornings
ITV1	-	15.30-1700	0925-1300	0925-1100
GMTV	Bank holidays 0600-0925	-	0600-0925	0725-0925
GMTV2	0630-0925	-	0600-0910	0610-0740
Channel 4	0600-0700	-	0600-0700	0600-0700
Five	0630-0900	-	0700-1110	0600-1230
Children's channels	All transmission time up to the 9pm watershed. Affected channels include Boomerang, Cartoon Network (and Plus), Jetix (+1), Nick Junior, Nickelodeon (and Replay), Nicktoons, Toonami, Trouble (and Reload), POP, Tiny POP and CiTV			

5.31 We estimate that, once fully implemented, this option would reduce the number of HFSS impacts upon children aged 4 -15 by 50% in addition to an almost certainly greater reduction on young children, which it is not possible to measure given currently available data. It would be targeted at HFSS foods only, which would allow non-HFSS foods to be advertised, and might also encourage manufacturers to reformulate products to allow them to be advertised, although this might not be practicable in some cases.

5.32 Based on data from the FSA's assessment of the possible benefits (Annex 6, Appendix C), the direct benefits (of reduced obesity) from this option are estimated to save costs of around £5 million per year. However, improved diets could lead to much larger indirect benefits from a reduction of intake of salt, non-milk extrinsic sugars and saturated fat, which could reduce the incidence of strokes, coronary heart

⁵⁶ This would include any advertisements or sponsorship by or for HFSS, soft drinks, fast food restaurants and food retailers that included references to HFSS products.

⁵⁷ A programme of particular interest to children under 10 would be deemed to be one that attracted an audience index of 120 for this age group. If a programme attracts an under-10 audience in a proportion similar to that group's presence in the population as a whole, it is said to index at 100. So an index of 120 is an over-representation of that group by 20%. The same approach to setting a threshold has been used for many years to ensure that alcohol advertisements are not shown in and around programming of particular appeal to under-18's.

disease and cancer. The FSA suggests an overall total benefit of approximately 5,000 lives per year saved from these non-obesity related conditions. In deriving its benefits assessment the FSA has used two approaches to valuing life. This is explained in more detail in the impact assessment. Based on FSA data, Ofcom has calculated that the central estimates for the value of savings from this would be about £303 million per annum based on the value of life approach, and around £63 million per annum based on the quality adjusted life years approach⁵⁸.

- 5.33 The potential impact on the commercial terrestrial channels is estimated to vary from 0.4% - 0.7% of total revenue. The impact on dedicated children's channels is estimated to be much higher from 4% - 21%. The impact on the other satellite-cable channels is expected to be generally much lower – mostly less than 0.2%; however seven channels (which constitute a mixture of genres such as sport, music, nature) would be more particularly affected – from 0.8% - 2.2% of revenue⁵⁹. To allow time for children's channels to adjust to the substantial cut they would face, Ofcom proposes that the restrictions on scheduling HFSS advertising should be phased in over three years. In the first and second year, the amount of permitted HFSS advertising would be cut to 50% of its 2005 levels, and in the third year, the rules would be applied in full.

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?

Package 2 - Timing restrictions on all food and drink products

- 5.34 This package is identical to Package 1 except that it does not require the use of a differentiation tool. In addition to the two common elements described above, the main components of Package 2 are an exclusion of all food and drink advertising or sponsorship⁶⁰ from children's airtime (at the times at which programmes specifically made for children under 10 are broadcast), and around programmes of particular interest to children. However, healthy-eating campaigns supported or endorsed by Government would be exempted.
- 5.35 The reduction in HFSS impacts would be the same as for Package 1, given the measures as they apply to HFSS products are the same in both packages. However, the package would be easier and less costly to monitor and enforce than Package 1. It would reduce the potential for accusations of undue discrimination from manufacturers of HFSS products, though manufacturers of non-HFSS products might argue that they should not be restrained from advertising products deemed by the FSA to be healthier. The impact on the revenues of broadcasters is likely to be slightly greater than for Package 1, as they would lose any revenue earned from non-HFSS advertising. However, given Ofcom's estimate that HFSS advertising accounts for between 80-90% of Core Category advertising expenditure on television, the difference might not be substantial. It is arguable that excluding non-HFSS food advertising would limit the ability of advertisers to promote healthier foods, and reduce incentives to reformulate food in order to be able to advertise on television.

⁵⁸ An explanation of these valuation approaches and more details of the analysis behind these estimates is given in the Impact Assessment at Annex 10.

⁵⁹ The analysis behind these figures can be found in section 7 of the Impact Assessment at Annex 6.

⁶⁰ This would include any advertisements or sponsorship by or for any food, soft drinks or fast food restaurants or food retailers that included references to food or drink products.

- 5.36 We estimate that the impact on the commercial terrestrial channels would vary from 0.5% - 0.8% of total revenue. We estimate the impact on dedicated children's channels would again be higher from 4% - 21%. The impact on the other cable-satellite channels would be generally lower – less than 0.2%; however there are seven channels (which again constitute a mixture of genres such as sport, music, nature) that would be more adversely affected – with a loss of up to 2.4% of revenue. In view of the significant effect this package would have upon the children's channels, we would propose that they be allowed to phase in the changes over three years, as described under Package 1.
- 5.37 In the benefits assessment prepared by the FSA, they have estimated the effects of a ban on HFSS adverts rather than all food and drink advertising. Given their approach which is based on assessing the impact of a change in children's diets resulting from advertising restrictions, it would be very difficult to adapt their methodology to cover this wider restriction which would affect adverts for healthy as well as less healthy foods. However:
- HFSS advertising is 80%-90% of all food and drink advertising and therefore the benefits are likely to be of a similar order of magnitude;
 - a ban on all food advertising would restrict the advertising of some healthy foods (for example low-fat meals). To the extent that this advertising would have promoted consumption of these healthy foods, this will reduce the benefits of this package compared to Package 1;
 - a ban on all food advertising would remove the incentive on advertisers to reformulate products so that they were below the FSA nutritional profiling cut-off level and therefore allowed to be advertised.
- 5.38 Therefore Ofcom considers that the benefits of this package would be close to, but probably lower than the benefits of Package 1.

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

- 5.39 In addition to the two common elements described above, the main components of Package 3 are restrictions on the amount of food advertising⁶¹ during times when children under 10 are most likely to be watching, as shown in Table 10. As with Package 2, healthy-eating campaigns supported or endorsed by Government would be exempted.

Table 10: Proposed volume restrictions on food & drink advertising under Package 3

Time slots	0600-0900 weekdays	0900-1500 weekdays	1500-1800 weekdays	1800-2000 weekdays	0600-1300 weekends	1300-2000 weekends
All channels except children's channels*	30 seconds per hour	none	30 seconds per hour	60 seconds per hour	30 seconds per hour	60 seconds per hour
Children's channels *	30 seconds per hour	30 seconds per hour	30 seconds per hour	30 seconds per hour	30 seconds per hour	30 seconds per hour

* No advertising would be permitted during programmes aimed at pre-school children.

⁶¹ This would include any advertisements or sponsorship by or for HFSS soft drinks and fast food restaurants that included references to HFSS products.

- 5.40 We estimate that the effect of these volume restrictions would be to reduce the number of food and drink impacts on all individuals by around a third which Ofcom estimates to equate to just over 50% of all children's (aged 4 – 15) food and drink impacts. Assuming the ratio of HFSS to non-HFSS food and drink advertising remained as at present, we estimate that the effective reduction in the number of HFSS impacts would be of the order of 45%. As with Package 2, this approach would reduce the potential for accusations of undue discrimination from manufacturers of HFSS products, though manufacturers of non-HFSS products might argue that they should not be restrained from advertising products deemed to be healthier by the FSA. It is likely that the costs of implementing this package and monitoring compliance would be greater than for either Packages 1 or 2.
- 5.41 The estimated costs to commercial terrestrial channels are approximately 3% of total revenue reflecting the wider timeslots that this package would constrain for terrestrial broadcasters' advertising activity compared to Packages 1 and 2. The impact on dedicated children's channels would be lower than for the previous packages at 2% – 12% of total revenue reflecting the opportunity that these channels would be able to sell some HFSS / food and drink advertising compared to the complete exclusion under the other packages. The cost to other cable-satellite channels is estimated to be on average at 0.3%. However there are eight channels (again a mixture of genres) that would be more adversely affected – with losses of up to 2.2% of total revenue. Given that the aim of introducing new rules is to protect children, there may be a case for exempting from the restrictions of this package those satellite and cable channels that have no, or a negligible, child audience. As the impact on children's channels would not be so great, we would not propose a transitional period for them under this package.

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?

- 5.42 Based on FSA estimates, the overall health benefit could be around £309 million per year based on the value of life approach, and around £64 million per year based on the quality adjusted life years

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?

Comparison of packages

Table 11 – Comparison of package restrictions

Package 1	Package 2	Package 3
BCAP content rules apply to all food & drink advertising and sponsorship		
No HFSS advertising in programmes made for pre-school children	No food or drink advertising in programmes made for pre-school children	
No HFSS advertising in programmes made for children (4-9 yrs)	No food or drink advertising in programmes made for children (4-9 yrs)	The volume of food and drink advertising to be limited at times when children (4-9) are most likely to be watching
No HFSS advertising in programmes of particular appeal to children (0-9 yrs)	No food or drink advertising in programmes of particular appeal to children (0-9 yrs)	
No HFSS sponsorship of programmes for children (0-9 yrs)	No food or drink sponsorship of programmes for children (0-9 yrs)	

5.43 There is an invitation to all parties to submit a fourth package within the parameters described in paragraph 5.23.

Table 12: Comparison of key impacts of policy packages

	Targeted at HFSS	Reduction in impacts	Impact on revenue of children's channels	Impact on revenue of terrestrial channels	Impact on revenue of other channels	Benefits
Package 1	Yes	50%	4 - 21%	0.4 - 0.7%	0.2%	£63m QALY £303m VOL
Package 2	No	50%	4 - 21%	0.5 - 0.8%	0.2%	Close to but lower than Package 1
Package 3	No	53%	2 - 12%	3%	0.3%	£64m QALY £309m VOL

Advertising and sponsorship by brands

5.44 As written, the scheduling and volume restrictions for all three packages apply to advertised products, and do not apply to brand advertising where no products are mentioned. The issue of brand advertising in the context of food advertising to children is complex. There is the question of defining a relevant brand to which restrictions might apply, whether it is by association with HFSS foods, or by an objective criterion such as marketing or production of HFSS products, or by some

other criterion. There is also the issue of unfairness of restrictions on manufacturers who are marketing and promoting healthier products using well-known brands previously exclusively associated with HFSS products. If there are no restrictions on brands there is a risk that manufacturers of HFSS products might seek to use brand advertising and especially brand sponsorship to substitute for the loss of product advertising opportunities. This risks negating any beneficial effect of the regulatory package.

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?

Implementation

- 5.45 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 Government's own change monitoring programme in 2007. Scheduling rules or volume restrictions would come in to force on 1 January 2007 for immediate effect.
- 5.46 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.

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