

## Coca-Cola GB

Question	Your response
<p><b>Question 1:</b></p> <p>Do you consider Ofcom’s proposed rule and the proposed definitions to be inserted into the BCAP Code reflect appropriately the requirements of Section 321A of the Communications Act? If not, please explain why.</p>	<p>Confidential? – Y / N</p> <p>The proposed rule and definitions satisfy the requirements of Section 321A as they mirror the language used in the Health and Care Act 2022, in terms of what constitutes an identifiable product for the purposes of advertising, and how it is to be determined whether a product is high in fat, sugar, or salt (HFSS). However, as we move from legislation into the creation of guidance for brand advertisers, we believe that more specificity – and, hence, legal clarity and business certainty – is required.</p> <p>In the first instance, we believe that the proposed rule and definitions should make specific mention of the fact that the <b>Nutrient Profile Model</b> (NPM) being used to determine whether a product is HFSS is that published in 2004-05. Ofcom will be aware that the Government consulted on a revised NPM in 2018 – a consultation to which it has never responded. Although Ministers have suggested that they would further consult ahead of any change to the NPM and the drawing of other food and drink products into scope, there remains uncertainty on this, which Ofcom could alleviate by referencing the 2004-05 NPM as well as the 2011 technical guidance.</p> <p>The Government has said that the focus of the restrictions and the trigger for them is the appearance of identifiable HFSS products, and that <b>brand-focused advertising</b> is exempt from the restrictions. The reason for this was explicitly stated as government not wishing brands to be disincentivised from reformulating their products, or talking about issues such as sustainability and corporate social responsibility. In our response to the consultation on the secondary regulations, we recommended to government that they should make their policy intention clearer to advertisers and regulators – either by way of an amendment to the Regulations to make it clear that there is a brand advertising exemption, or by way of a public statement to industry.</p>

We believe that Ofcom could assist this process and provide clarity by including a short piece of language in their proposed rule which acknowledges the policy intention that brand advertising should be exempt from the restrictions.

Language which could help do this already exists in government documentation: in the guidance for the HFSS promotions restrictions recently enacted. Mirroring this language could take the form of saying:

**“TV advertising for identifiable less healthy food and drink products may not be shown between 5.30am and 9.00pm. This does not apply to brands or masterbrands, meaning that a brand’s product range may have products in and out of scope of the restrictions.”**

We continue to believe that it is essential that it be made clear in the Act, as well as the BCAP and CAP Codes, that there is an exemption for brand advertising, to guard against misinterpretation and overapplication of the new restrictions.

There is a lack of a mention for the exemptions which Ministers have set out has caused uncertainty amongst advertisers. When they set out their policy, Ministers were clear that there are also exemptions for business-to-business advertising, services connected to regulated radio, transactional content, and channels such as websites and social media which are owned by the brand. These exemptions have been officially mentioned nowhere in the legislation. We would encourage Ofcom to help bring certainty by making mention of those exemptions, rather than leave them to be inferred by the regulations’ focus on identifiable products, or only existing in [the Government’s response](#) to its original Obesity Strategy consultation.

**Question 2:**

**Do you consider Ofcom’s proposed Rule 9.17A and the associated meaning, to be inserted into the Broadcasting Code, reflect appropriately the requirements of Section 321A of the Communications Act? If not, please explain why.**

The proposed rule and definitions satisfy the requirements of Section 321A as they mirror the language used in the Health and Care Act 2022, in terms of what constitutes an identifiable product for the purposes of advertising, and how it is to be determined whether a product is high in fat, sugar, or salt (HFSS). However, as we move from legislation into the creation of

guidance for brand advertisers, we believe that more specificity – and, hence, legal clarity and business certainty – is required.

In the first instance, we believe that the proposed rule and definitions should make specific mention of the fact that the **Nutrient Profile Model (NPM)** being used to determine whether a product is HFSS is that published in 2004-05. Ofcom will be aware that the Government consulted on a revised NPM in 2018 – a consultation to which it has never responded. Although Ministers have suggested that they would further consult ahead of any change to the NPM and the drawing of other food and drink products into scope, there remains uncertainty on this, which Ofcom could alleviate by referencing the 2004-05 NPM as well as the 2011 technical guidance.

The Government has said that the focus of the restrictions and the trigger for them is the appearance of identifiable HFSS products, and that **brand-focused advertising** is exempt from the restrictions. The reason for this was explicitly stated as government not wishing brands to be disincentivised from reformulating their products, or talking about issues such as sustainability and corporate social responsibility. In our response to the consultation on the secondary regulations, we recommended to government that they should make their policy intention clearer to advertisers and regulators – either by way of an amendment to the Regulations to make it clear that there is a brand advertising exemption, or by way of a public statement to industry.

We believe that Ofcom could assist this process and provide clarity by including a short piece of language in their proposed rule which acknowledges the policy intention that brand advertising should be exempt from the restrictions. Language which could help do this already exists in government documentation: in the guidance for the HFSS promotions restrictions recently enacted. Mirroring this language could take the form of saying:

	<p>“TV advertising for identifiable less healthy food and drink products may not be shown between 5.30am and 9.00pm. <b>This does not apply to brands or masterbrands, meaning that a brand’s product range may have products in and out of scope of the restrictions.</b>”</p> <p>We continue to believe that it is essential that it be made clear in the Act, as well as the BCAP and CAP Codes, that there is an exemption for brand advertising, to guard against misinterpretation and overapplication of the new restrictions.</p> <p>The lack of a mention for the other exemptions which Ministers have set out causes uncertainty. When they set out their policy, Ministers were clear that there are also exemptions for business-to-business advertising, services connected to regulated radio, transactional content, and channels such as websites and social media which are owned by the brand. These exemptions have been officially mentioned nowhere in the legislation. We would encourage Ofcom to help bring certainty by making mention of those exemptions, rather than leave them to be inferred by the regulations’ focus on identifiable products, or only existing in <a href="#">the Government’s response</a> to its original Obesity Strategy consultation.</p>
<p><b>Question 3:</b></p> <p><b>a) Do you agree with Ofcom’s proposal to designate the ASA as a co-regulator for the prohibition on online advertising for less healthy food and drink products?</b></p> <p><b>b) If you do not agree with the proposal to designate the ASA as a co-regulator, please explain why. If appropriate, please include any alternative approaches to regulating online advertising for less healthy food and drink products under the Communications Act 2003, explaining why such an approach would better fulfil the statutory requirements.</b></p>	<p>We agree with the proposal to designate the Advertising Standards Authority as co-regulator for the online restrictions.</p> <p>Ofcom’s consultation document sets out exactly the rationale for this approach. The ASA as the adjudicator of the Codes, and CAP/BCAP as its sister bodies which author those Codes, is an established, experienced and respected regulator which commands the confidence of legislators, brands, and consumers. We do not believe that there should be any regulatory fragmentation: the maintenance of the ‘one-stop shop’</p>

	<p>for advertising issues across all media is crucially important for our members.</p> <p>The ASA and CAP/BCAP have extensive experience of managing the existing HFSS restrictions (and adapting them to changed circumstances, as was done in 2017). Their expertise will be crucial in fusing the LHF restrictions with the existing HFSS ones – a task which will be far from straightforward. Their experience is also critical in ensuring appropriate enforcement of the rules and compliance with them, as well as appropriately judging any complaints and requiring co-operation in correcting breaches of the Codes.</p>
<p><b>Any additional comments on: Ofcom’s proposed approach to enforcing the new prohibition on advertising for less healthy food and drink products online; and Ofcom’s assessment of the impact of our proposed approach to implementing the new restrictions on advertising and sponsorship for these products on TV, ODPS and online.</b></p>	