

# **Regulation of advertising of less healthy food and drink: Implementation of new statutory restrictions**

## **ITV plc response - April 2023**

### **Context**

ITV recognises the limited scope of this current consultation - focused on the technical requirements of implementing a policy introduced by the UK Government. However, it is important that ITV's responses to the specific questions raised are not taken as an endorsement of the overarching policy intervention. ITV recognises the scale of the childhood obesity challenge and supports the Government's effort to address this crisis but we remain firmly of the view that an HFSS television advertising ban remains the wrong purported "solution" at the wrong time.

Given the unprecedented economic challenges the UK currently faces, it is more crucial than ever to protect the contribution that broadcasters make to the Government's growth agenda - across all nations and regions of the UK - and their role as a driver of growth in high value exports and inward investment to the UK.

However, the evidence is clear that the proposed advertising restrictions are certain to cause significant damage to the Creative Economy, will be almost entirely ineffective in tackling obesity, and ignore the significant and more impactful contributions that broadcasters already make to tackling childhood obesity.

### **Damage to the Creative Economy**

According to the Government's own impact assessment, broadcasters and online media companies would lose out on revenues totalling between £4.1bn and £7.8bn over 25 years if a watershed ban on TV and total online ban on HFSS ads was introduced - placing jobs, investment and growth across the UK at risk.

Previous TV industry estimates suggest that the cost to the UK TV Economy could be even bigger than the Government suggests, as much as £10bn over 25 years (assuming an economic multiplier effect of around 2x spend) as a result of removing approximately £200m pa of advertising revenue from the UK TV market.

TV is at the heart of the UK Creative Economy and according to the Government's Broadcasting White Paper "drives growth right across the creative industries." In 2019, the creative industries contributed c£116bn to the UK economy - more than the aerospace, automotive, life sciences, and oil and gas sectors combined.

UK TV advertising restrictions are already some of the toughest in the world. Commercial and public service broadcasting is already under significant pressure from the globalisation of TV production and distribution. Some of the largest technology platforms in the world, who are predominantly based in London and the South East of England, are putting increasing pressure on the economics of UK television. This is therefore not the time to inflict more burdensome red tape on UK broadcasters who are spread across the whole UK.

### Ineffective in tackling obesity

There is no evidence that a TV advertising ban will be effective. The Government's own assessment suggests that restricting HFSS advertising on TV would reduce children's food consumption by just 1.7 calories per day - less than a tic tac.

On the Government's numbers, between 2005 and 2017 children's exposure to HFSS advertising on TV fell by 70%. But despite this huge decline in exposure there was no corresponding reduction in levels of childhood obesity.

Between 2018 and 2021, children's viewing of commercial TV declined a further 40%, further undermining the already weak case for TV ad restrictions to protect children.

95% of all TV viewing in the UK before 9pm is by adults and not by children. A TV ad ban in the name of protecting children is therefore entirely misdirected in the online era when children spend more time online than watching TV.

### Ignore the significant and more impactful contributions that broadcasters already make to tackling childhood obesity

Broadcasters have promoted healthy living through our programming and through major public awareness campaigns including *The Daily Mile* and *Eat Them to Defeat Them*. These already deliver a far greater impact on calories consumed and burned than the proposed TV ad ban:

- *Eat Them To Defeat Them* has reached 43 million people. 57% of the 1m children participating in the schools' programme ate more vegetables. Over 1.4 billion additional children's portions of vegetables have been sold as a result of the first two years of the campaign.
- Since April 2019, 2.2 million more children are doing *The Daily Mile*.

### **We welcome the fact that Government thinking is continuing to evolve**

We welcome the extension to the date on which the restrictions will come into effect. This was a sensible decision in light of the extensive preparation that is required to implement the extensive and technically complex requirements of the new regime.

We also welcome the fact that the Government's thinking on the regime as a whole is continuing to develop and evolve. The Government originally considered that the restrictions on advertising would deliver a small reduction in children's calorie intake. It was this small decrease that the Government suggested justified the significant impact on the creative industries, as part of a wider package of measures. As you know, that was a position we took issue with throughout the policy-making process, though we recognise that for now that decision has been made.

But we were interested to see Lord Markham's recent remarks on behalf of the Government. They seemed to recognise the limited benefit that will arise from the advertising restrictions

directly, and instead suggested that the main purpose of the restrictions was in fact to stimulate product reformulation:

*“I now turn to what the Government think the impact of the advertising restrictions will be. Restricting advertising of these products when children are likely to see it is estimated to reduce their calorific intake by two calories per day. To get this right: the measures introduced to date reduce intake by 76 calories per day, and the ad restrictions will reduce it by two calories per day; in other words, our actions to date—again, the noble Baroness, Lady Walmsley, asked what our actions have done—make up 95% of the reduction. What we are discussing tonight is equivalent to roughly 2%.*

*So what is the big win that is still out there, as mentioned by the noble Baronesses, Lady Merron and Lady Bull? What are the things that are going to really move the dial? Actually, it is the reformulation of food. This is the thing that Nesta estimates can reduce calorie intake by another 30 to 40 calories per day; that is, it would be 15 times more impactful than the advertising ban. How can we do this? I was asked earlier for examples of voluntary reductions working. The sugary drinks tax reduced the level of sugar in milk-based drinks by 30%. Why was that? Basically, the producers wanted to reformulate their foods to reduce the impact of the tax. We needed to give industry the incentive, and the industry took it.*

*Why is this relevant to an advertising ban? As mentioned earlier by the noble Lord, Lord Allan, and others, advertising does work, and producers want to be able to advertise their foods. So signalling that we are going to put an advertising ban in place is a very sensible carrot-and-stick approach. The stick is the advertising ban. It will not have much impact in terms of calories, but it will have an impact on the producers, because advertising works. The carrot is to avoid that ban by reformulating the product. That is the big win we are talking about here; that will have the big impact of 30 to 40 calories per day. However, we need to give producers the time to implement that.*

*If you follow the thinking through, we need to spend time with the industry and Ofcom to consult. We need to get their input. We need to show them that we are serious in what we are doing, and we need to give them the time to change by reformulating their recipes, testing them on consumers and then putting them out there into the marketplace. Those are the actions that are going to make the difference—not the banning of the ads, but the actual action of signalling that we are banning them and giving industry the time to reformulate its products. That is the voluntary approach I am talking about.<sup>1</sup>”*

We welcome the fact that the Government is clearly continuing to give considerable thought to this complex issue, though the basis for the ban now seems to be different to that which was proposed and consulted on.

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<sup>1</sup> <https://hansard.parliament.uk/undefined/2023-02-27/debates/0A853E76-DF56-4D74-A9BA-850952DC372A/web>

We can also see the logic that reformulation is more likely to deliver a far more fundamental improvement to children's diets than advertising restrictions. We are, though, sceptical that the ban as currently proposed will drive the desired outcomes, not least because the Government's impact assessment found that only a:

*"...small proportion of the adverts in [the Government's] TV advertising model, 2.6%, advertised a product which met the criteria for reformulation. These adverts represented 2.5% of all TV food/drink advertising spend.<sup>2</sup>"*

The Government's own evidence therefore shows that an advertising ban will not (and in virtually all cases cannot) drive extensive reformulation, as is clearly the Government's desire (and it would seem the new basis for the policy).

## **Response to Ofcom's consultation questions**

Question 1: 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.

ITV is content that the proposed rule and accompanying definitions reflect the requirements of Section 321A of the Communications Act, with one minor exception. We believe that the proposed definition of 'less healthy products' (LHP) needs tightening slightly to ensure it references the specific version of the nutrient profiling model (NPM) which is to be applied. The law is clear that the restrictions draw from the 2005 version of the NPM only. This is reflected in the current BCAP Code definition.

Ofcom's proposed rule and definition on their own will be insufficient to give adequate clarity to industry to properly implement the restrictions. CAP guidance will be vital in providing this clarity. As such, Ofcom should reference the relevance of that guidance in relation to its own rules and definitions, and in its direction of the ASA.

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.

ITV is content that the proposed rule reflects the requirements of Section 321A of the Communications Act.

Our suggested change to the proposed definition of 'less healthy products' set out in response to Question 1 above also applies here to Ofcom's own amendments to its Broadcast Code in relation to sponsorship requirements and its changes to ODPS requirements.

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<sup>2</sup> *ibid*

As above, the rule and associated meaning alone will offer insufficient clarity. Ofcom should reference CAP's guidance in this context.

Question 3: 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) 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.

ITV agrees with Ofcom's proposal to designate the ASA as co-regulator.

In addition, stakeholders are invited to comment on: Ofcom's proposed approach to enforcing the new prohibition on advertising for less healthy food and drink products online (see section 6); and our 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 (see section 7).

No comment.