

FDF response to Ofcom consultation “Broadcasting Code Review: Commercial references in television programming”

SUMMARY

The Food and Drink Federation (FDF) represents the interests of UK food and drink manufacturers – the country’s largest manufacturing industry. Our sector comprises 7,000 businesses, directly employs 440,000 people and turns over almost £73bn annually.

As the voice of that economically-vital sector, we welcome the opportunity to respond to this consultation on proposals to revise the Broadcasting Code to allow paid-for product placement in television programming.

From the start, we would like to remind Ofcom that neither FDF, nor any of its members, pressed for these changes in the consultation on Television Product Placement conducted by the Department for Culture, Media and Sport (DCMS) in 2009. In fact, we supported the position adopted by ISBA – the representative organisation for British advertisers – that paid-for placement was unnecessary given the success of prop placement mechanics in the UK.

In legislating to allow broadcasters and programme makers to generate revenues from product placement, DCMS introduced a complete prohibition on the placement of food and drink products high in fat, salt or sugar. At the time, Ministers argued that the prohibition would have to be on all such products in all programming, as developing a restriction only for programmes which have a large child audience would be “complex to administer”.

As we argue in our submission, we believe that decision was fundamentally flawed. In reality, the then Government agreed legislative proposals that will create an inconsistent, two-tier regulatory system for food and drink producers – and, in so doing, breach the principles of better regulation.

We are also concerned that in reviewing the Broadcasting Code to allow commercial references in programming, Ofcom is proposing to define products that are high in fat, salt and sugar using the nutrient profiling scheme devised by the Food Standards Agency (FSA).

The nutrient profiling model was developed solely for the purposes of supporting Ofcom’s restrictions on TV advertising around programmes watched by children. Food and drink advertisers have been repeatedly assured that this model would not be used for any other purpose. It was certainly never designed as a tool for distinguishing which products can benefit from paid-for product placement within programmes watched by children and adults alike. It is unacceptable that Ofcom is proposing to extend the use of the FSA’s nutrient profiling model in this way, without any prior consultation with the food and drink industry, relevant expert bodies (including the FSA) and other stakeholders.

We would urge Ofcom to reflect on the wider implications of the inconsistent regulatory approach it has been asked to bring to life through the Broadcasting Code and, perhaps, seek clarification from Ministers as to whether this is the most appropriate way forward.

DETAILED RESPONSE

FDF is pleased to support ISBA's response on the detail of this consultation, which provides a comprehensive view from advertisers on how best to revise the Broadcasting Code to accommodate the provisions of The Audiovisual Media Services (Product Placement) Regulations 2010.

However, FDF would also like to make some specific observations in relation to **Question 16.2** in your consultation document, namely: 'Are there any other relevant matters you consider that Ofcom should take into account in this Review, if so provide details, with supporting evidence wherever possible.'

1. An inconsistent regulatory system

Our first concerns relate to the enabling Regulations themselves, which we believe are fundamentally flawed and, if implemented as proposed in your review, will lead to the development of an inconsistent regulatory system for food and drink producers; one that clearly undermines the principles of good regulation.

In legislating to allow broadcasters and programme makers to generate revenues from product placement, the previous Government introduced a complete prohibition on the placement of food and drink products high in fat, salt or sugar (as well as five other categories of product). At the time, Ministers argued the prohibition would have to be on all such products in all programming, as developing a restriction only for programmes which have a large child audience would be "complex to administer".

But this is simply not true when it comes to food and soft drinks.

Our members are already governed by strict rules on both the content and scheduling of TV advertising in relation to children – a fact, we believe, the previous Government overlooked when drafting The Audiovisual Media Services (Product Placement) Regulations 2010.

In particular, the current restrictions on TV advertising of food and drink to children – introduced by Ofcom in November 2006 – contain a specific ban on the scheduling of products high in fat, salt or sugar during children's airtime and around programmes with disproportionately high child audiences.

Ofcom's own [research](#) demonstrates that these rules are working – and you have declared yourself "satisfied that the restrictions have served to reduce significantly" the amount of advertising of products that fail the nutrient profiling model developed by the Food Standards Agency (FSA). In maintaining the current restrictions, you stated that these rules are among the strictest in the world – and we would agree.

Food and non-alcoholic drink producers have shown their desire to operate within both the spirit and the letter of these regulations – and many companies have gone further, introducing their own self-regulatory codes with regards to marketing to children.

No responsible company would wish to use paid-for product placement as a way of undermining these existing restrictions. And we believe it would have been both logical and simple for the Government to extend the current TV advertising scheduling restrictions to cover paid-for product placement during children's airtime or in programmes with disproportionately high child audiences.

We would not have opposed such a move, which we believe would have ensured a consistent regulatory approach and one that would have clearly targeted children (not adults), in line with existing public health policies and priorities.

Instead, we are now facing a ludicrous situation whereby a company may in future be able to advertise its product around an adult TV programme, and will be allowed to sponsor that programme, but that same company will not be able to take advantage of the new rules allowing paid-for product placement within an adult programme if its product fails the FSA's nutrient profiling model.

You may argue that our concerns are outside the scope of this consultation.

However, we believe that serious errors were made in drafting the Regulations now being implemented through your review of the Broadcasting Code. The current proposals will create an inconsistent, two-tier regulatory framework that runs contrary to the new Government's stated commitment to ensure that, if regulation is needed, it is designed and implemented in the best possible way.

2. Inappropriate extension in the use of the FSA's nutrient profiling model

As well as our very real concerns about the inconsistent regulatory approach being proposed in relation to commercial references in programming, we are dismayed that Ofcom is planning to use the nutrient profiling model developed by the Food Standards Agency (FSA) to define those food and drink products that will be banned from paid-for product placement.

Ofcom has clearly [acknowledged in the past](#) that any system for differentiating between healthier and less healthy products may have drawbacks. You have also recognised that you do not have any expertise in nutritional profiling and that you depended on the independent advice of the FSA to identify an appropriate tool for differentiating between products in the context of the rules on the TV advertising of food and drink products to children.

When it introduced the nutrient profiling model the FSA (and advisory bodies such as SACN) were clear about the specific purpose of this tool and recognised that it would be inappropriate for other uses without testing it on a case by case basis. In its [review](#) of the profiling model, completed in 2009, the FSA was again explicit about the purpose: "the model was developed solely to assist Ofcom apply TV advertising controls which seek to improve the balance of foods being advertised to children."

Food and drink advertisers have been repeatedly assured that the FSA's nutrient profiling model would not be used for any other purpose. We do not believe that it was ever designed as a tool for distinguishing which products can benefit from paid-for product placement within programmes watched by children and adults alike. Therefore, we find it unacceptable that Ofcom is proposing to extend the use of the FSA's nutrient profiling model in this way without any prior consultation with the food and drink industry, relevant expert bodies (including the FSA) and other stakeholders or, for that matter, any detailed testing to discover whether the tool is fit for this particular purpose.

As we have already explained, the proposed rules would mean that a product aimed at adults, being advertised around adult programming, would be banned from taking advantage of the new rules on paid-for product placement if it failed the FSA's nutrient profiling model. This is clearly totally disproportionate – and again undermines the principles of good regulation,

Particularly when it is clear that the profiling model was developed with a single core purpose (TV advertising to children, not product placement for children and adults alike).

CONCLUSION

In concluding, we would urge Ofcom to reflect on the wider implications of the inconsistent regulatory approach it has been asked to bring to life through the Broadcasting Code and, perhaps, seek clarification from new Ministers as to whether this is the most appropriate way forwards.

In particular, we would highlight two key concerns:

- FDF and its members did not lobby for the introduction of paid-for product placement. But if paid-for product placement is to be introduced in the UK, we believe it must be done in a way that is consistent with the existing regulations covering the TV advertising of food and drink products to children. These regulations provide clear restrictions on scheduling which could be applied to commercial references in programmes, thus avoiding the creation of an unnecessary two-tier regulatory framework, while meeting the core public health objective of protecting children.
- We believe it is unacceptable for Ofcom to believe it can simply extend the scope of the FSA's nutrient profiling model to cover paid-for product placement without further consultation or any testing of alternative approaches. As we have explained, the FSA is clear that it developed the nutrient profiling model for a single purpose and it would be wrong, therefore, to extend the use of this model to cover all paid-for product placement in all programming (in the absence of any rules on scheduling).

THE UK FOOD AND DRINK MANUFACTURING INDUSTRY

The Food and Drink Federation (FDF) represents the food and drink manufacturing industry, the largest manufacturing sector in the UK, employing around 440,000 people. The industry has an annual turnover of over £72.8bn accounting for 15% of the total manufacturing sector. Exports amount to almost £10bn of which 79% goes to EU members. The industry buys two-thirds of all the UK's agricultural produce.

The following Associations are members of the Food and Drink Federation:

ABIM	Association of Bakery Ingredient Manufacturers
ACFM	Association of Cereal Food Manufacturers
BCA	British Coffee Association
BOBMA	British Oats and Barley Millers Association
BSIA	British Starch Industry Association
CIMA	Cereal Ingredient Manufacturers' Association
EMMA	European Malt Product Manufacturers' Association
FA	Food Association
FOB	Federation of Bakers
FPA	Food Processors' Association
GPA	General Products Association
MSA	Margarine and Spreads Association
SB	Sugar Bureau
SMA	Salt Manufacturers' Association
SNACMA	Snack, Nut and Crisp Manufacturers' Association
SPA	Soya Protein Association
SSA	Seasoning and Spice Association
UKAMBY	UK Association of Manufacturers of Bakers' Yeast
UKHIA	UK Herbal Infusions Association
UKTC	UK Tea Council

Within FDF there are the following sector organisations:

BCCC	Biscuit, Cake, Chocolate and Confectionery Group
FF	Frozen Food Group
MG	Meat Group
ORG	Organic Food and Drink Manufacturers' Group
SG	Seafood Group
VEG	Vegetarian and Meat Free Industry Group
YOG	Yoghurt and Chilled Dessert Group

Further information on FDF is available at www.fdf.org.uk.